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THE MIROSLAV MEDVID INCIDENT—
October 24-29, 1985

REPORT

PREPARED BY THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

FOR THE USE OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
Washington, DC, July 22, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On October 29, 1985, the U.S. Government returned Soviet seaman Miroslav Medvid to his ship, the *Marshal Konev,* a Soviet freighter waiting in the lower Mississippi to take on a load of grain. One week later, the Subcommittee on Immigration and Refugee Policy held the first of a series of investigative hearings on the circumstances surrounding Medvid's desertion and his ultimate return to the Soviet ship. The subcommittee staff also conducted an intensive field investigation of the Medvid incident.

The following subcommittee report contains the findings and conclusions of our investigation.

ALAN K. SIMPSON,
Chairman, Subcommittee on
Immigration and Refugee Policy.

FOREWORD

The Subcommittee on Immigration and Refugee Policy has engaged in a review of the details surrounding the Miroslav Medvid incident. This report contains the findings regarding the U.S. Government's handling of this matter obtained through a series of hearings and an intensive field investigation conducted by the Immigration Subcommittee.

At the request of Senator Simpson, I have authorized this material to be printed so that the findings of this investigation may be made available to the public.

STROM THURMOND,
Chairman, Committee on the Judiciary.

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I. INTRODUCTION

On October 24, 1985, Soviet Seaman Miroslav Medvid jumped from the *Marshal Konev* (a Soviet grain freighter) while it was docked in New Orleans, LA, and reportedly attempted to request political asylum in the United States. He was interviewed by U.S. Border Patrol agents on that same night and then ordered returned to his ship. U.S. officials from the INS and State Department subsequently boarded the ship, obtained an agreement from Soviet officials that Medvid would be re-interviewed concerning his desire for political asylum, and proceeded to question him over a period of 2 days. Mr. Medvid consistently held that he did not want political asylum during this second interview process, and was finally returned to his ship on October 29, 1985.

The Medvid case has raised many questions concerning the manner in which U.S. Government officials handled the incident and concerning U.S. asylum policy toward Communist-bloc nations in general. The Senate Subcommittee on Immigration and Refugee Policy held a series of hearings and conducted a staff investigation on the matter. This report addresses the facts developed through that hearing and investigation process.

This report is divided into 6 sections: (1) a brief summary of the events from the time of Medvid's desertion to his final return to the Soviet ship; (2) a summary of the hearings that the immigration subcommittee held on November 5, 1985, November 7, 1985, February 5, 1986, and March 7, 1986; (3) a review and discussion of the major issues and points of controversy concerning the incident; (4) a description of the roles played by the individuals who had the most contact with Medvid, and their perspectives on the case; (5) a review of the adequacy of present INS asylum procedures; and (6) conclusions drawn by the subcommittee based on the hearing and investigation process.

II. SUMMARY OF EVENTS

A similar chronology of events was entered into the hearing record of March 7, 1986:
(Times are approximate)

October 24, 1985

7:00 p.m.—Medvid leaves the Soviet ship *M.V. Konev* and swims to shore.

7:35 p.m.—Medvid runs into a nearby shopping center parking lot, encountering Joseph Wyman and Wayne Wyman, jewelers with a shop in the shopping center. The Wymans determine Medvid wants to go to the New Orleans Police.

8:15 p.m.—Wayne Wyman leaves shopping center with Medvid to drive to the New Orleans police station.

9:30 p.m.—Wayne Wyman drops Medvid off at the New Orleans First District Police Station. Medvid enters the police station, tries to communicate with a desk officer, leaves the police station, returns 15 minutes later, and again tries unsuccessfully to communicate with the desk officer who now calls the New Orleans Harbor Police.

9:56 p.m.—The New Orleans police deliver Medvid to the New Orleans Harbor Police, where Corporal Willie George and Captain Patricia Majors attempt to communicate with Medvid without success. They then call the Border Patrol.

10:25 p.m.—Border Patrol agents Ernest Spurlock and Joseph Bashaw pickup Medvid at Harbor Police Station. They take Medvid to the Border Patrol Station where they interview Medvid through a translation supplied by INS interpreter, Irene Padoch, by telephone. Believing Medvid is not requesting political asylum, the Border Patrol agents contact Universal Shipping, shipping agent of the *Marshal Konev,* and request that the shipping agent return Medvid to his ship.

OCTOBER 25, 1985

12:30 a.m.—Mike Flad and Timothy Maloz, shipping agent representatives, arrive at the Border Patrol Station and are given an INS order for the return of Medvid to his ship. They drive Medvid to Port Ship Service for transfer by launch to the *Marshal Konev,* anchored in the river.

1:15 a.m.—Flad, Maloz and Raymond Guthrie, launch operator, board the launch with Medvid to return to the *Marshal Konev.* After reaching the *Marshal Konev,* Medvid exchanges words, then shouts, with the *Konev's* first mate and then jumps from the launch into the river. He is followed by the launch to the shore, where a struggle ensues. Medvid is subdued by the Soviet first mate and the shipping agents, and then returned to the *Marshal Konev* again with his hands bound and carried by several Soviet seamen who had been brought to shore by the launch operator.

2:00 p.m.—The New Orleans Border Patrol headquarters learns of the forcible return of Medvid and dispatches agents to board the *Marshal Konev* and attempt to return Medvid to the Border Patrol Station.

2:40 p.m.—The Border Patrol notifies the Department of State of the incident and the State Department requests the Coast Guard and Customs to take steps to hold the *Marshal Konev.* State Department representatives are dispatched to New Orleans.

2:45 p.m.—Deputy Chief Border Patrol Agent William Worley, Agent Spurlock and Agent David Vannett board the *Marshal Konev* and identify and observe Medvid in the infirmary. Medvid appears sedated (sleeping), has a bandaged arm, and is loosely tied to his bed. Border Patrol agents remain on ship continually until Medvid is removed.

10:30 p.m.—Department of State representatives, including Louis Sell, board the *Marshal Konev* and remain on the ship continually until Medvid is removed.

OCTOBER 26, 1985

3:00 p.m.—Louis Sell and Navy doctor James Caruthers visit Medvid in the infirmary. They are accompanied by Agent Vannett, who identifies Medvid. Doctor Caruthers makes a cursory examination and finds Medvid in generally good condition. Medvid volunteers that he wishes to return to the U.S.S.R., and Sell advises him that this issue will be discussed later. Later that afternoon, a special interpreter (Russian and Ukranian) engaged by the State Department arrives in New Orleans and boards the *Marshal Konev* and remains until Medvid is removed.

OCTOBER 28, 1985

4:30 p.m.—Medvid is transferred to the Coast Guard buoy tender *Salvia*, where he is examined by Dr. Caruthers and interviewed by Louis Sell through the interpreter. Medvid again expresses his desire to return to the U.S.S.R.

10:15 p.m.—U.S. officials decide to take Medvid ashore for a night's rest and further interviewing. Over strong Soviet objections, Medvid is transferred to a naval shore facility, examined by Dr. Caruthers and Air Force psychiatrist Dr. William Hunt. Later Medvid watches TV, retires and sleeps for 6 hours.

OCTOBER 29, 1985

After breakfast, Medvid is examined further by Dr. Hunt.

12:00 noon—Louis Sell resumes interviewing Medvid who continues to state he wishes to return home to the U.S.S.R. (and to see his mother and father).

2:45 p.m.—U.S. officials decide to permit Medvid to return to the *Marshal Konev* after he signs a statement confirming his stated wish to return to the U.S.S.R.

III. REVIEW OF HEARINGS

The subcommittee hearings dealt with nearly every aspect of the case, and the Members heard testimony from most of the individuals who were directly involved in the incident. Each successive hearing focussed on specific issues and received testimony from individuals who had not previously appeared before the subcommittee.

(1) NOVEMBER 5, 1985

This hearing was the first held by any Congressional committee concerning the Medvid incident, and was conducted before the *Marshal Konev* had left U.S. waters. Witnesses at the hearing included Alan Nelson, Commissioner of the Immigration and Naturalization Service (INS); Dr. Irene Padoch, the contract interpreter for INS who translated the initial interview with Mr. Medvid; William Woessner, Principal Deputy Assistant Secretary of State for European and Canadian Affairs; J. Robert Grimes, Regional Commissioner of the South Central Region of the U.S. Customs Service; and Rear Admiral Donald Thompson, Chief of Staff of the U.S. Coast Guard.

A major purpose of the hearing was to obtain accurat
tion about the events that led to Medvid's initial retu
Marshal Konev and the subsequent re-interview of him
Department officials.

Commissioner Nelson described the interview that t
place between Border Patrol Agents Spurlock and Basha
lav Medvid, and the Ukrainian translator, Irene Padoch.
that: (1) the border patrol agents did not recognize Medv
ments to include a request for political asylum, and thus
him returned as a routine ship jumper, (2) INS "immedia
asylum procedures (copy included in the hearing recor
that INS regional and central offices, as well as the Sta
ment, be contacted when a Communist-bloc national
asylum or appears to be a potential asylum seeker, (3) t
patrol agents should have followed these procedures, bu
and (4) once the New Orleans Border Patrol Office and
Central Office learned of the error, INS agents were im
dispatched to the Soviet ship to stay in Medvid's vicinit
tempt to secure his release for a further interview. Com
Nelson also testified that former INS Associate Commis
Examinations, Andrew Carmichael, had been appointed
task force to study the effectiveness and potential need fo
of the present asylum regulations.

Deputy Assistant Secretary of State Woessner testified
State Department worked from the beginning with the as
that Medvid desired political asylum and that he should
the opportunity to request asylum in a neutral, non-th
environment. He then outlined the steps taken by State
ment and INS officials to secure a second interview with
(1) a State Department official (later identified publicly
Sell) was dispatched from Washington, DC to New Orleans
ber 25, 1985, and he boarded the *Marshal Konev* at 10:3
the night of the 25th, (2) this official was joined by a
doctor and State Department translator fluent in Russian
Ukrainian (Dr. James Caruthers and Ross Lavrov, respec
the 26th who made a brief examination of Medvid and
he was well enough to be taken from the Soviet ship for
interviews; (3) after consultation with the Soviets, Medvid
moved to a Coast Guard buoy tender on the afternoon of
28, 1985. Seaman Medvid was interviewed by the State
official, and he stated his desire to return to the Soviet
U.S. officials decided that further interviews were nece
Medvid was transferred to the bachelor officers' quar
nearby U.S. naval facility during the night of the 28th
given a thorough physical examination by Dr. Caruthers
chiatric examination by an Air Force doctor (Dr. William
lowed to relax and eat, and then slept for about 6 hours;
psychiatric exams were performed on the morning of
during which the psychiatrist concluded that Medvid
under the influence of drugs and capable of making respo
cisions about his future; (6) further interviews on the 29t
the State Department representative and Medvid re
change in Medvid's desire to return home; and (7) Medvi

statement stating his desire to leave the United States late on the afternoon of the 29th and was subsequently returned to his ship.

Dr. Padoch did not present prepared testimony, but did submit her sworn statement of October 27, 1985 for the hearing record and answered questions asked by members of the subcommittee. Dr. Padoch noted that Medvid jumped ship because he wanted "to live in the honest country." She stated that early on in the interview he did not formally request political asylum. However, when the Border Patrol officer conducting the interview asked her specifically to ask Medvid whether he wanted political asylum, she replied that Medvid answered "without any hesitation," and that the answer was "yes."

In response to a question from Senator Denton, Dr. Padoch contested a story in the Washington Times (November 1, 1985, p. A-1, "Interpreter Impugns U.S. Medvid Story"), which suggested that Medvid originally answered "no" to Dr. Padoch's queries about his desire for asylum because he misunderstood what it meant. [illegible] Dr. Padoch, who lives near New Orleans, the Times reported the following:

> Ms. Padoch also told Mrs. Sas-Jaworsky that the U.S. official in New Orleans asked Ms. Padoch to ask him if he wanted asylum. When she asked that question, he first did not give an answer, Mrs. Sas-Jaworsky said.
>
> When she asked again the man became petrified, and said "no" several times, according to Mrs. Sas-Jaworsky's talk with Ms. Padoch.
>
> According to several Ukrainians, including Mrs. Sas-Jaworsky and Mr. Kurpel, the translation for asylum means two things: "freedom" or "to throw away." Mrs. Sas-Jaworsky said she discussed with Ms. Padoch that Mr. Medvid had thought they were asking him if he wanted to be taken to a mental asylum.
>
> "He thought they were asking if he wanted to be taken to the crazy house," Mrs. Sas-Jaworsky said. "Naturally you would say no."

A similar story appeared in the New Orleans Times-Picayune (November 1, 1985, p. 1, "Asylum: Did Word Doom Defector?"):

> The interpreter who first interviewed Soviet seaman Miroslav Medvid said Thursday that the sailor didn't ask for asylum in the United States because he thought it meant he would be institutionalized.
>
> Irene Padoch, a New York interpreter who speaks Ukrainian, said Medvid thought asylum "meant something for the mentally ill." Padoch, who has a contract to interpret for the Immigration and Naturalization Service, said Medvid indicated in a telephone interview that he wanted to defect to the United States.

Dr. Padoch had the following exchange with Senator Denton concerning this issue:

> Senator DENTON. Ms. Padoch, I have read your affidavit, and I just want you to know that I believe everything you

have said; I admire very much your courage in speaking out about this matter.

I am confused about some of the reports I have read in the newspapers regarding alleged conflicts in what you have told them was said in the first interview.

I am quoting from the Washington Times, page A1, November 1, 1985, headline "Seaman Wanted to Stay, Interpreter Says." It says in the paragraph, "Ms. Padoch said that the U.S. officers in New Orleans told her to ask him if he wanted asylum. When she asked that question, he first did not give an answer. When she asked again, the man became petrified and said 'No' several times."

I know that you do not agree with that statement——

Dr. PADOCH. Absolutely not.

Senator HEFLIN [continuing]. But do you have any idea where they got that version of what you told them?

Dr. PADOCH. Absolutely. I do not know, because it was without any hesitation, he answered, at once, and I asked him asylum but political asylum.

In response to additional questions, Dr. Padoch discussed the conditions of the telephone interview, her perception of Medvid's emotional state during the interview, her status and frequency of use as an INS contract interpreter, and a brief conversation that she had with State Department officials when they were conducting the second interviews with Medvid at the U.S. naval facility.

Senator Humphrey gave oral testimony before the subcommittee and subsequently participated as a member ex-officio. He contended that the statements Medvid made during his second interviews by State Department officials should not be accepted because of the coercion he likely endured after he was initially returned to his ship. He also urged that subcommittee members and other Senators subpoena Medvid for further questioning so that his intent with regard to political asylum could be determined firsthand by a congressional committee.

Admiral Thompson of the Coast Guard testified that, upon notification by the State Department, the Coast Guard directed its vessels to take positions to prevent the *Marshal Konev* from leaving U.S. waters and to enforce a security zone around the ship. The Coast Guard also provided a vessel, the *Salvia*, for the initial re-interview of Medvid, and provided and operated small vessels for the transportation of government officials between vessels and between ships and shore. However, the Coast Guard played a "support role" throughout the process.

Commissioner Crimes of the Customs Service testified that, upon notification by INS, the Service informed the *Marshal Konev*'s shipping agent that the ship would not be allowed to continue unless Medvid was found to have left the ship voluntarily. Customs officers also participated in a search with Soviet officials after the ship was boarded by INS officials on October 30, but the Service had a minimal role throughout the incident.

(2) NOVEMBER 7, 1985

The subcommittee met in closed session on this date to receive certain information on the Medvid case which the State Department at that time requested not be made public. Other documents were also provided that had never been classified. The documents distributed at that hearing to the subcommittee members and Senator Humphrey have all since become part of the public record. No witnesses testified at the closed hearing.

The documents received at the closed hearing were: (1) a transcript of the November 1, 1985 in camera testimony of Roger Brandemuehl (Assistant Commissioner of INS for the Border Patrol) before U.S. District Court Judge Lewis F. Oberdorfer in the case of *Ukrainian American Bar Association* v. *Shultz* (Civil Action No. 85-3487), (2) copies of Judge Oberdorfer's decision of November 1, 1985 and the November 5, 1985 decision of the U.S. Court of Appeals for the D.C. Circuit affirming Judge Oberdorfer's decision, (3) a copy of Dr. J.M. Caruthers' (handwritten) preliminary medical report of October 26, 1985 concerning Mr. Medvid, (4) a copy of Dr. Caruthers' final medical report on Medvid of October 28, 1985, and (5) a copy of the psychiatric evaluation of Medvid prepared by Dr. William Hunt on October 30, 1985.

(3) FEBRUARY 5, 1986

This hearing attempted to deal with some of the specific issues that arose after the first hearing and after the *Marshal Konev* had left U.S. waters. Every cosponsor of Senate Resolution 267, which would have created a Special Panel to investigate the Medvid incident and U.S. asylum procedures, received a letter from Senator Simpson, chairman of the immigration subcommittee, which stated the following:

"On February 5, 1986, at 10 a.m., in SD 226, the subcommittee will hold its third hearing on the Medvid incident and review of U.S. regulations and procedures regarding defectors from the Eastern-bloc countries. At this hearing, we shall be addressing such issues as whether Miroslav Medvid was mentally and physically capable of making a rational decision concerning an asylum application; whether a "substitute Medvid" was presented by the Soviets for the second interview with U.S. officials; and why a Russian translator was used rather than a Ukrainian translator for the second interview of the Soviet seaman."

Witnesses at this hearing included Commissioner Alan Nelson of the INS; Assistant Commissioner for the Border Patrol Roger P. Brandemuehl; Deputy Assistant Secretary of State William Woessner; Lt. Comdr. J.M. Caruthers, U.S. Navy; Maj. William M. Hunt III, U.S. Air Force; and Taras Szmagala, Member, Board of Directors, Ukrainian National Association. Mr. Brandemuehl and Doctors Caruthers and Hunt had firsthand contact with Medvid during the re-interview process. Senator Humphrey participated as an ex-officio member of the subcommittee.

Secretary Woessner first addressed whether the man who originally jumped ship was the same man that State Department officials took off the *Marshal Konev* to interview. He stated that based on "both eyewitness and photographic identification . . . there is

no truth" to the allegation that there was more than one Medvid. The Border Patrol officer (Spurlock) who initially interviewed Medvid was brought on board the *Marshal Konev,* and he identified the man in the ship's sickbay as Medvid. Another INS Border Patrol officer (David Vannett) entered the sickbay immediately after Spurlock positively identified Medvid and spent a period of time with Medvid in the sickbay. When State Department representatives later boarded the ship and began negotiating to have Medvid removed for re-interview, the second INS officer (Vannett) accompanied them and identified Medvid for the State Department official. This official also had a photograph taken of Medvid by the arresting border patrol officer, and he identified Medvid positively from that photograph.

Secretary Woessner next discussed the accusation that Medvid was not provided proper translation services during the second interview process, because he was spoken to in Russian, not Ukrainian. Woessner revealed that the State Department's contract interpreter was fluent in Russian and Ukrainian, and "the interpreter's assessment was that Seaman Medvid was more fluent in Russian and that Russian was his preferred language." Woessner stressed that, "the key point . . . is that at no point did Seaman Medvid express a wish to have the interview conducted in any other language than Russian."

Finally, Secretary Woessner discounted allegations that Medvid was under the influence of drugs during the reinterview process. He stated that the State Department assumed that Medvid had been coerced not to defect, and that he had been administered mind-altering drugs. Indeed, this was a factor that was considered when U.S. officials decided to remove Medvid from the Coast Guard vessel—against strong Soviet protest—and take him ashore for additional rest and further interviews. Most important, according to Woessner, Medvid was examined thoroughly by two U.S. doctors, and "they concluded that Seaman Medvid was not under the influence of drugs at the time of the interviews and that he was mentally and physically competent to make his decision."

Commissioner Nelson testified that the "immediate action" asylum procedures had been reissued to the field so that all border patrol officers would receive additional information concerning the procedures. He stated "the border patrol agents involved unfortunately did make mistakes," both in not exercising proper judgment and failing to follow established procedures. He noted that disciplinary action was proceeding against the two border patrol officers. Finally, he emphasized that 9 separate court actions seeking to reverse U.S. Government practices in the Medvid case had been denied by various Federal courts, and that Medvid's insistence on returning to the ship ultimately became so vehement the U.S. officials had no choice but to grant his wish.

Assistant Commissioner Brandemuehl was present during the reinterview process, and he described many of the events of those interviews. He stated that he was sent to New Orleans with instructions to assist the State Department in interviewing Medvid, initiate an investigation into the original interview that Medvid had with the two border patrol agents, and help formulate a contingency plan for forcibly removing Medvid from the *Marshal*

Konev if the Soviets did not allow him to leave for another interview off the ship. Brandemuehl noted Medvid repeatedly stated that he wished to return home, that he frequently mentioned wanting to see his mother and father, and that he seemed fully capable of making a rational choice. "He was alert and responsive to our questioning and he appeared to be in control of all his faculties." Brandemuehl also stressed that "we demonstrated to Mr. Medvid that we had firm control over the situation," and disagreed with charges that the presence of Soviet officials intimidated Medvid during the reinterview process. He said that American control over the situation became particularly apparent when we stated that Medvid would be taken to a U.S. naval base ashore for further interviews, the Soviets vigorously opposed the move, but Medvid was removed nonetheless. In response to questions, Brandemuehl stated that there was absolutely no evidence that the then-upcoming Reagan-Gorbachev Summit had an effect on the handling of the incident, and he said that there was no evidence that border patrol agents Spurlock and Bashaw contacted any higher U.S. Government officials before ordering Medvid returned to his ship. Brandemuehl also stated that a tape was made of the interview of Medvid aboard the Coast Guard vessel, and that a transcript had been prepared, but not released, of the interview.

Both Commissioner Nelson and Assistant Commissioner Brandemuehl rejected the notion that there was a secret U.S.-Soviet agreement, as part of the grain sales arrangement, to return all Soviet defectors to their country no matter the validity of their asylum claim. Nelson said, "I am not aware of any such agreement and I am confident that none exist as far as our agency is concerned.

Dr. Caruthers and Dr. Hunt presented very brief statements and spent the majority of their time responding to questions about their examination of Mr. Medvid and their conclusions concerning his mental and physical condition.

Dr. Caruthers testified that his primary function was to determine Medvid's physical condition, and that he conducted two examinations on Medvid to determine this: one on October 26, 1985 onboard the *Marshal Konev,* the other the evening of October 28, 1985. The initial examination was intended only to determine whether Medvid was alive, whether he was the same person who was earlier interviewed and ordered returned by U.S. Border Patrol agents, and whether there was any immediate medical problem with Medvid that would have to be attended to before any interviews could proceed. The second examination was a thorough physical evaluation of Medvid, including clinical examinations of whether Medvid was under the influence of drugs. Dr. Caruthers stated that, with a reasonable medical certainty, he determined that Medvid was mentally and physically capable of making a rational decision on whether to request political asylum. In response to queries about Medvid's judgment being influenced by drugs, Dr. Caruthers answered that, "there was no clinical observation that he was under the influence of drugs at all, (or) that he would be incapable of understanding and participating in the interviews."

Dr. Hunt was questioned at length concerning his determination, as stated in his psychiatric report of October 30, 1985, that Medvid was competent to make a decision concerning political asylum.

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Much of that questioning revolved around the contention by some that blood and urine tests should have been conducted on Medvid to determine whether he was under the influence of drugs. In oral testimony, Dr. Hunt noted that there were no clinical indications of drug-influenced behavior, and thus no reasons to consider further tests for drug influence. In response to written questions for the hearing record, Dr. Hunt elaborated on this point (answers are printed in full in the hearing record):

> The clinical assessment that I made, with the data derived from it, was very adequate in ruling out any drug induced impairment of Medvid's competence. This includes not only possible impairment secondary to the drugs reportedly administered Medvid on Friday, October 25, 1985, but also includes any possible impairment secondary to all other classes of psychoactive substances, such as stimulants, hallucinogens, solvents, analgesics, and sedatives (including minor tranquilizers, antianxiety drugs, and sleeping pills). I can confidently state this, based on having looked for, yet there having been an absence, of any clinical picture consistent with such drug-induced impairments. Although I personally did not perform a complete physical examination, I did consult with Dr. Caruthers prior to the physical examination that he performed on Medvid Monday evening, October 28, 1985. The purpose of this consultation was to specifically clarify various physical findings to look for on the upcoming physical examination that would have related to possible drug effects. Additionally, in conjunction with Dr. Caruther's physical examination, I did perform several additional clinical neurologic tests, to look for specific clinical signs that would have related to possible drug effects . . .
>
> . . . On the late evening of October 28, 1985, his pulse rate was 84 per minute. Pressure at that time was 130/88, with respiration of 18 per minute with no respiratory distress. Thorough examination of the face and cranium, both by Dr. Caruthers and by me, Dr. Hunt, indicated no evidence of recent trauma, with no deep bruises or contusions and no evidence of fractures. However, there was noted an old, well-healed, small scar on the mid-forehead. Eye examination indicated pupils that were equal in size, round, and reactive to light. There was no nystagmus detected, in spite of specific observation for this clinical sign. The oral mucosa was well hydrated and not excessively dry. There was no evidence suggestive of autonomic instability . . .
>
> . . . Neurological assessment indicated an entirely normal gait and station. There are good motor strength diffusely, with normal muscle tone, with no evidence of cogwheeling or rigidity. As previously noted, there was no decrease in spontaneous motor movement. There was no evidence of sedation or other forms of altered state of consciousness. His speech was spontaneous with the other Soviets and State Department-provided interpreter having no apparent difficulty understanding his verbal speech. Deep

tendon reflexes were normal and equal bilaterally. He was right handed. Basic sensory functions were tested and were within normal limits. Frontal release signs were specifically tested, but there was an absence of such signs. Two point extinction was also tested, with a normal response. Normal cerebellar function was clearly demonstrated by lengthy observation of his motor behavior. Likewise, there was an absence of apraxias . . .

. . . To reiterate, it isn't possible in 1986 to correlate blood or urine levels of such substances with either pharmacologic or clinical effects to any meaningful degree and as a result, clinical assessment is paramount. Furthermore, Medvid's presentation, as assessed with my skills, defied the presence of neuroleptics to such a degree that would have impaired his competence to make a rational decision in regards to defection.

Dr. Hunt was also questioned about the possibility of Medvid's experiencing a "manic-depressive illness if he had been held for further questioning, as the psychiatric report of October 30, 1985 mentioned. Some Senators asked if a man with the potential for such an illness was actually capable of making a rational decision concerning political asylum. In a written answer for the hearing record, Dr. Hunt responded as follows:

Hypomania can be briefly described as a constellation of (1) elevated, expansive, labile, and sometimes irritable mood, associated with (2) excitable and animated behavior, and (3) thought which is congruent with the mood. In hypomania, this constellation is of a lesser degree of severity than would be the case in a manic episode. A manic episode would be one of two presentations of manic-depressive illness, i.e., Bipolar Disorder, manic type. Hypomania, by definition, is not a psychotic disorder although a manic episode often presents with psychotic features.

Due to Medvid's hypomanic features, I specifically proceeded to attempt to rule in or rule out the presence of Bipolar Disorder, manic type. I ultimately concluded that on October 28, and 29, 1985, he was, is spite of his hypomanic features, not psychotic or in a manic episode. Reference is made to my original report and to my forthcoming response to question 5 of these 8 questions regarding what information and examinations were used to reach these conclusions.

It was also necessary, based on sound principles of psychiatry, to consider the various possible explanations of the observed hypomanic behavior. As noted in paragraph 26 of my original report, the weight of the evidence indicated that his hypomanic behavior represented his response, based on personality and characterological features, to his situation. Organic etiologies, such as major metabolic disturbance and hyperthyroidism, post-concussive syndrome, and toxic effects secondary to chemicals and drugs, were ruled out on the basis of an absence of correlating and supportive findings on physical and psychi-

atric examination. These associated findings were searched for, but were absent. A hypomanic picture can also possibly represent an incomplete expression of a still-evolving Bipolar Disorder, manic type. However, there are no examinations or procedures other than longitudinal observation that could answer this question with certainty. (The future of psychiatry offers many challenges.)

As a result, I had to consider that even though on October 28th and 29th, 1985, Medvid was not psychotic or in a manic episode, he may, with time, become overtly manic. Based on my conclusions about the etiology of his hypomanic features, I did not see his developing a manic episode as likely, but it couldn't be ruled out. Nevertheless, on October 28, and 29, 1985, he was clearly competent to make a decision in regard to defection. My original report, paragraphs 2 and 5, elaborated on this. Furthermore, even if his hypomanic behavior had been secondary to other causes or did represent an incomplete form of bipolar disorder, my basic conclusion regarding his competency on October 28, and 29, 1985 would still hold, as can be illustrated by reference to page 323, Psychiatry and Law, by Ralph Slovenko, LL.B., Ph.D., Professor of Law and Psychiatry. On this page, in reference to the issue of contractural capacity relevant to the question of Medvid's competency, Dr. Slovenko states, "With rare exception, though, the courts hold the manic-depressive to his contractual obligation since he has the necessary cognitive ability required in law."

Finally, testimony was presented by Mr. Taras Szmagala, a member of the Board of Directors of the Ukrainian National Association. While neither Mr. Szmagala nor the association of which he is a member had a direct role in the Medvid incident, he did explain the perspective of the Ukrainian-American community with regard to the Medvid case. Mr. Szmagala asked that the U.S. Congress "secure the freedom of Miroslav Medvid," investigate the matter thoroughly at the "highest levels" of the U.S. Government, and "restore the faith and confidence of ethnic Americans in their government and its institutions."

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The fourth hearing on the Medvid case was called to receive additional testimony from people who had first-hand contact and key government roles in the handling of Mr. Medvid's apparent defection attempt. In addition, the hearing addressed the possibility of a "switch of Medvids" onboard the *Marshal Konev.* This scenario was supported by an article published in the New York Times on March 2, 1986, entitled, "Was Soviet Seaman Switched for a Non-Defector?" Witnesses at the hearing included Ernest Spurlock, agent, U.S. Border Patrol; Joseph Bashaw, agent, U.S. Border Patrol; Alan Nelson, Commissioner of INS; Rozanne Ridgway, Assistant Secretary of State for European and Canadian Affairs; Louis Sell, Deputy Director for Bilateral Political Relations, Office of Soviet Union Affairs, Department of State; William Worley,

Deputy Chief Agent, U.S. Border Patrol; and David Vannett, agent, U.S. Border Patrol.

Border Patrol Agents Spurlock and Bashaw were the agents who initially interviewed Mr. Medvid through the translation services of Dr. Padoch and then ordered Medvid returned to his ship. Agent Spurlock was the primary arresting officer, and he conducted the interview with Medvid, through Dr. Padoch's translation, on the telephone. He gave the following statement concerning the interview process in oral testimony:

> I then contacted Ms. Padoch and asked if she would be able to interpret for the deserted crewman. Ms. Padoch consented, and after advising Mr. Medvid of his rights to counsel, I asked why he had jumped ship. The reply was, "for many, many reasons."
>
> I then, through Ms. Padoch, obtained the necessary biographical data to complete the I-213, which is the arrest record for deportable aliens. And during the course of the interview, which lasted for about an hour, I asked two or three times, or more, If Mr. Medvid wanted political asylum.
>
> Each time, the response was the same. He responded, "No; I do not want to go back to the ship." I might add at this point that the crewmen that we have encountered in the past did not want, for whatever reason, to return to their vessel.
>
> I again asked why he had jumped ship and this time, after a short discussion with Ms. Padoch, she responded, "well, if you want to put something down for your records, you can put down for moral and political reasons."
>
> Since Medvid did not request political asylum, he was then treated as a routine deserter, processed on an I-259, and turned over to the shipping agent. At no time did Mr. Bashaw nor I contact or discuss this matter with any superior in my chain of command in the Border Patrol or with anyone in the Immigration Service or the Department of State.
>
> The decision to detain and deport Mr. Medvid was based on specific representations to me by Ms. Padoch that Medvid was not requesting political asylum; that he just did not want to return to the ship.

In response to questions from the subcommittee members, agent Spurlock explained that he had had some difficulty understanding Ms. Padoch's accent, and she may have had some difficulty understanding his southern accent, but the telephone connection itself was not faulty. Agent Spurlock also stressed that he had recorded the cause for Medvid's desertion on the INS form I-213 as "for moral and political reasons" at the instruction of Dr. Padoch, but only after Medvid had answered "no" several times to inquiries about his wish for political asylum. Both Agents Spurlock and Bashaw stated that they had had no contact with other INS, State Department or U.S. Government officials before they called the shipping agent to have Medvid returned to the *Marshal Konev*. Finally, both agents testified that they had acted properly in the

case, had made sufficient inquiry into Medvid's wish for asylum and received a negative response, and thus felt that disciplinary action against them was unwarranted.

Agent Spurlock was later joined at the witness table by Agent Vannett and Deputy Chief Agent Worley to discuss the "chain of identification" that was established by INS to ensure that the Medvid who was originally interviewed in New Orleans, identified in the *Marshal Konev's* sickbay, and removed from that ship for further interview, was the same person.

Deputy Chief Agent Worley narrated the identification process in chronological order. He stated that he was contacted by the Chief Border Patrol Agent on October 25, 1985, informed of the events in the Medvid case and instructed to go aboard the *Marshal Konev* to remove Medvid for further interview at the border patrol office. Agent Worley asked Agent Spurlock to accompany him for the purpose of identification and also asked Agent Vannett to accompany him for additional assistance. The border patrol officers then boarded the Soviet ship at 3:00 p.m. on October 25, were escorted to the Captain's cabin, were given Medvid's passport (at which point Agent Spurlock identified the man in the passport photograph as the man he had interviewed the night before) and then were escorted to the sickbay, where Medvid lay resting and apparently sedated. Agent Spurlock identified him as the man he had interviewed on the previous night. Agent Worley also took a look at the man lying in the sickbay at this time, and then stationed a watch in the infirmary, with Agent Spurlock and Agent Vannett rotating at hourly intervals. Both agents had been alone with Medvid for approximately 1 hour each when the ship's captain, after conferring with the Soviet Embassy, ordered the agents out of the sickbay but allowed them to stay aboard the ship.

Agent Worley stated that he and his officers remained on board the ship until Medvid was removed to the Coast Guard vessel *Salvia* on October 28. In the interim, Louis Sell, the State Department representative, arrived on the ship at 10:30 p.m. on October 25, and at 3:00 p.m. on October 26 he and Dr. Caruthers briefly examined Medvid in the *Marshal Konev* sickbay. Agent Worley testified that Medvid was re-identified on October 26 through the following process: (1) after Agent Spurlock identified Medvid in the sickbay on October 25, he and Agent Vannett stood guard over him for approximately 1 hour each, (2) when Louis Sell and Dr. Caruthers spoke with Medvid on October 26, Agent Vannett accompanied them and positively identified him as the same man that agent Spurlock had identified on the previous day, and (3) Louis Sell and Dr. Caruthers each used the Border Patrol picture (exhibit 1) and Medvid's passport picture to positively identify him as the man who was originally apprehended. Agent Worley later saw Medvid aboard the Coast Guard vessel *Salvia*, and again still later at the U.S. naval facility ashore. Agent Worley stated of his contact with Medvid ashore: "For many hours I had the extended opportunity to observe the individual, and it was the same individual—without hesitation on my part—that was identified to me in the infirmary by Agent Spurlock."

Agent Vannett confirmed Agent Worley's description of the "chain of identification" process, adding that Medvid had a mark

or a callous on his left big toe that helped him re-identify Medvid on October 26. He stated that there was "no doubt in my mind that it was him."

Ambassador Ridgway in her prepared statement addressed two important issues in the Medvid case:

> Among the many rumors and allegations which have developed around this case, prominent attention has been given to two mutually inconsistent conspiracy theories . . . The first alleges that the Administration conspired with the Soviets to return Seaman Medvid to the Soviets in order to avoid an incident prior to the November summit. The second theory holds that we were duped by the Soviets and that the man we actually interviewed was a "substitute."
>
> Both allegations are completely false. From the start, our primary concern was the welfare of Seaman Medvid. Considerations about Geneva or the possible impact of the case on U.S.-Soviet relations played no role in our handling of the case. To assert otherwise is not only mischievous, but flatly wrong. There is also no doubt that the individual we interviewed on October 28 and 29 was the same individual interviewed by the INS on October 24.

In response to questions from subcommittee members, Ambassador Ridgway stated that no single executive branch agency took the lead in the re-interview process as it was directed from Washington, DC, and that the Departments of State and Justice were joined by the National Security Council as the case progressed. Deputy Secretary of State John Whitehead conducted oversight of the State Department's activities, and he was assisted by Mark Palmer, Deputy Assistant Secretary of State for European and Canadian Affairs. Ambassador Ridgway noted that, among the group of State Department people that she was working with, the upcoming United States-Soviet Summit in Geneva was never once discussed during the course of the Medvid case.

Louis Sell gave a detailed account of his involvement in the Medvid incident:

> My first meeting with Medvid, as I said, was on Saturday afternoon, the 26th, at about 3:00. The meeting itself, I should stress, the agreement to the meeting, was negotiated in Washington. The Soviets agreed to it in Washington through discussions in Washington.
>
> My involvement was in the meeting itself and the interview. I went to the sickbay where Medvid was in the company of a naval doctor, an INS officer who had been with him the day before . . . Mr. Vannett, and the Soviet consular officers and the ship's captain. When we got to the sickbay, Medvid was there lying in bed and the ship's doctor was already in the room.
>
> I spoke to Medvid briefly to tell him who I was and to make it clear to him and to the Soviets that this was not the interview that we were seeking, that that interview had to take place off the ship, off the *Konev*, but this meet-

ing was to ascertain his health, first. We wanted to make sure that he did not need to be taken off that ship for medical treatment immediately, which we were prepared to do if he needed it.

We wanted to make sure who he was and just his condition. I had with me when I went down there the report that the two INS officers who had interviewed him the evening before—or, I am sorry, on the 24th—had made, and attached to that was picture, a frontal picture, of Mr. Medvid.

I compared that picture that was taken of Mr. Medvid on the evening of the 24th with the individual lying before me. I asked for his passport, which, as is customary, the ship's captain keeps. It was brought to us.

I looked at the passport carefully, compared the picture in the passport with the picture the INS had taken; looked at the description and ascertained that the individual before us was indeed Miroslav Medvid.

At that point, the doctor conducted a physical exam. The doctor has already testified about what he did, and Mr. Vannett is here so I do not need to—he also looked at the documents I did, but I am sure he will be able to tell you about that.

That meeting lasted about an hour, I think. We then withdrew. The Soviet consular officer said that is all—that is the only interview you have. And we made it clear to him that was not going to be the case.

Further negotiations were conducted in Washington. The proceedings were delayed about a day while Hurricane Juan passed through New Orleans, and on Monday, the 28th, the Soviets agreed in Washington, as a result of negotiations going on in Washington, that we could take off Medvid and interview him on board the Coast Guard Cutter *Salvia,* which was moored a couple hundred yards astern of the *Konev.*

We did that at about 4:00. He left the *Konev*, boarded the *Salvia,* and after a very few brief preliminaries we began the interview in the ward room of the *Salvia.* I chaired that interview.

Also present from the U.S. side were Mr. Brandemuehl from INS, our interpreter, and the doctor. For the Soviet side, there were the two Soviet consular representatives, the ship's captain, and the ship's doctor.

Shortly after . . . I established the ground rules for the interview, allowed the Soviet representative to make a short statement.

Very shortly after we began talking to Medvid, he said he felt sick. We allowed him to go out in the fresh air; he still felt nauseous.

The doctor examined him, decided he needed some rest. He rested about half an hour or so. The doctor and he agreed that he could continue the interview, so we reconvened in the ward room of the *Salvia* and continued through the interview.

I questioned him extensively about what had happened, about his reasons for the actions,and finally I asked him—I made it clear to him he was not under any detention; that if he wished to, he could remain in the United States; made it clear that if he wished to remain, he would not be returned to the Soviet ship. He could leave immediately in our company and all Soviets present would leave immediately for their ship.

I asked him if he wished to remain in this country. He waited. He had a glass of ice water in front of him. He sipped that glass until he finished it and then replied "there is a saying that there are many places in the world, but home is best."

At that point, under instructions, I adjourned the interview and went to the bridge of the *Salvia* and reported on everything that had happened, together with another State Department officer, to Washington.

We waited for Washington's response, which came back in about 45 minutes or so, and the response was that in view of his bout of illness and the ambiguous nature of the reply I have just described, positive but eliptical, that he should be taken off the *Salvia* and given a good night's sleep at a naval facility on shore and interviewed again the next day.

When I went back and informed the Soviets of this decision, they objected very strenuously, accused us of bad faith and a lot of other things, and insisted on the right to call their embassy in Washington, which we gave them. So the Soviet consular officer, since he could not call his embassy from the bridge of the *Salvia* as we could Washington, took a launch to the shore, telephoned his embassy, came back. All this took some time, approximately an hour.

He came back and said, our response is that we do not agree to this; we insist that we return to the ship. Mr. Medvid has told you he wants to go back and that should be enough.

We repaired to the bridge of the *Salvia*. I again consulted with Washington. Their response was we should take him off. We would allow the Soviets to accompany him, if they wished, but if they continued to object, we were to take him off alone.

At this point, I informed the Soviets of this decision. I might add that we did so making it clear that we were prepared to separate them by force. When I informed the Soviets of this decision, the Soviets were still in the ward room with Medvid and always in the company of Americans, including our interpreter. I had standing behind me eight, I believe it was, uniformed officers of the tactical squad of the Border Patrol carrying night sticks. They stood behind me in clear view of the Soviets. Although at no time did I threaten to use them, it was clear what we were saying to them.

When I told them that we were prepared to separate them from Mr. Medvid and take him off alone, but we would allow them to accompany, they, again, continued to protest strenuously, but agreed to go with us to the shore.

We traveled to the shore on board a Coast Guard launch, drove to the naval facility. We arrived there at approximately 10:30 Monday night. Dr. Caruthers examined Mr. Medvid in the BOQ (Bachelor Officers Quarters).

We established Medvid in a suite in the BOQ, established the Soviets in another separate suite, and established the groundrules: that is, that the Soviets could have one person, and no more than that, in the adjoining room to Mr. Medvid. All the other Soviets had to remain in a separate suite.

Dr. Caruthers did a medical examination of Medvid. Medvid was very excited and he watched television until late in the evening. I finally had to pull the plug on the TV and we got him to bed.

He woke up the next morning around 8:00. We gave him breakfast, and the psychiatrist conducted a very long interview with him; it lasted a couple of hours. We then reconvened for a second interview with Mr. Medvid, which was conducted in the sitting room of the suite with all of the same participants.

I ran through very much the same questions. At the conclusion of that interview, Mr. Medvid said again that he wished to return to the Soviet Union. We repaired to another room, telephoned Washington, and reported to Washington the results of the interview.

We waited about 2 hours or so; it could be a little longer. We got word of the decision that at this point we should allow—we should reconvene the interview, seek to get Medvid to sign a statement that he wished to return and was doing so voluntarily—the Committee has been furnished a copy of that statement—and to let him go at that point.

We reconvened. The Soviet consular officer raised some objections to the first draft of the statement. Mr. Medvid raised some more objections. There were some negotiations, in the course of which certain changes were made to the statement.

We reached agreement on the statement. He signed it, I signed it, the consular officer signed it. At about 6:00, we left the naval shore facility, drove to the banks, took him on a Coast Guard launch—again, in my company, our interpreter and two or three uniformed Border Patrol officers—took him to the *Konev* and left him at the gangplank, and he walked up in the company of the two Soviet consular officers, the captain, and the doctor.

There were an extensive series of questions for Mr. Sell. He stated that fingerprints of Medvid were not taken for the second interview (to match them with fingerprints taken of Medvid by the Border Patrolmen) for two reasons: (1) photographic and eyewitness

identification of Medvid had already been made, and (2) because Medvid had previously had an unpleasant experience with the U.S. Government, State Department officials did not want to further intimidate him by repeating a procedure that is commonly performed on people who are arrested. Mr. Sell stated that he was quite proficient in the Russian language (he rated a "four-four" on the State Department's scale of one to five, with five-five being attained by a native speaker), he had frequent conversations with Medvid in Russian, and both were able to understand each other. He noted that the Russian language is commonly used in negotiations and interviews such as these, because it is the official language of one of the two countries involved. Medvid spoke Russian at all times, and even spoke to the ship's captain—who was Ukrainian by nationality—in Russian. Had Medvid requested translations in Ukrainian, that would have been provided, because the contract interpreter for the State Department, Ross Lavrov, was fluent in Russian and Ukrainian. However, said Mr. Sell, at no time did Medvid request to conduct the interviews or carry on any conversations in Ukrainian, and Medvid had no difficulty at all in speaking or understanding Russian. Mr. Sell said that both he and Mr. Lavrov felt that Russian was Medvid's "primary language."

With regard to identity and a possible "switch of Medvids," Mr. Sell stated that the man he interviewed clearly appeared to be the same person represented in the Border Patrol and passport photographs, and he recounted the "chain of identification" that INS witnesses had previously described. In addition, Mr. Sell stated, there were logical errors in the hypothesis that the Soviets had "switched Medvids." He contended, ". . . if the Soviets had indeed pulled a switch, which they did not . . . they relied on a man who did very poorly from their point of view. If you believe they switched Mr. Medvid, then you also have to believe that the false Medvid went on the *Salvia* as I have described, got sick and answered a question which—the key question, he answered that positively but elliptically. In other words, he responded in a fashion which was calculated to raise legitimate doubts about what he had said. And indeed, it was his behavior, as I have described it, which led us to take him off the *Salvia*. If the Soviets had pulled a switch, they would have hardly gotten a man who would have done that."

With regard to the atmosphere and intentions displayed by U.S. Government officials, Mr. Sell responded that there was no spectre of our Geneva summit hanging over the Medvid interview process, and that his instructions, and his subsequent thoughts and actions, were directed toward removing Medvid from the *Marshal Konev* and interviewing him in a neutral environment. Mr. Sell discussed at length the conversations he had with officials in Washington during the interview process—and whom these conversations were held with—and stated that at no time did "international considerations" enter into the process.

In response to a question about whether Medvid knew the United States was in control of the re-interview situation, despite the presence of Soviet officials, Mr. Sell gave the following response:

> From the very beginning when we took him off the ship, he could be under no doubt that he was in a situation under our control. We took him to the *Salvia*, which, must have looked like a naval vessel. All of the officers and enlisted men were in uniform. As far as he knew, he was on what looked like a naval vessel.
>
> He saw us throughout the incident repeatedly work our will on the Soviets against their strenuous objections. He witnessed this confrontation that I have described earlier in which we used the threat of Border Patrol tactical squadrons to separate him from the Soviets to take him off the ship.
>
> He knew we had taken him to a naval facility where he was guarded continually by uniformed Border Patrol officers. He saw us there work our will on the Soviets. There is no doubt in my mind that this man understood he was in a situation which was totally under the control of the United States.

Senator Humphrey challenged Mr. Sell's interpretation, contending that Medvid's prior encounter with U.S. Border Patrol officers would likely make him suspicious of all U.S. officials from that point on.

Under further questioning, Mr. Sell revealed that there were times when he was alone in the room with Medvid, with no Soviet personnel present. While this did not occur during the formal interview process, Mr. Sell did note that Medvid had the opportunity many times to speak or behave differently, out of the company of the Soviet officials, but never took these opportunities to change his story. Mr. Sell also noted that, as the interviews progressed at the naval facility, Medvid's statements about his desire to return home became more and more strident.

Senator Humphrey criticized the State Department, during questioning of Ambassador Ridgway, for allowing the *Marshal Konev* to leave U.S. waters, despite the fact that the Senate Agriculture Committee had issued a subpoena for Mr. Medvid, and that authority for the government to restrict the departure of such an alien exists under U.S. immigration law (section 215 of the Immigration and Nationality Act, 8 U.S.C. 1101 et. seq.). Senator Humphrey's letter to the Justice Department inquiring why the Senate subpoena was not enforced, and the department's response, are discussed at length in section IV of this report.

The open hearing was followed by a closed session, which discussed the specific details of the contingency plan, formulated by the INS, to remove Medvid by force from the *Marshal Konev* if the Soviets had not consented to his removal. No further hearings were scheduled upon adjournment of this hearing.

IV. MAJOR CONTROVERSIES

A number of issues have arisen in the Medvid case which have called into question the U.S. Government's handling of the incident. This section addresses each of these controversies, and the related information developed from the subcommittee hearings and staff investigation.

(1) "Switch of Medvid"

There were two major assertions of the possibility that the Soviets "switched Medvids" and supplied an imposter for the reinterview process with American officials. The first arose shortly after the first subcommittee hearing, and began on the day Medvid was removed from the *Marshal Konev* the second time for the interview aboard the Coast Guard buoy tender, October 28, 1985. On that day, a New Orleans Times Picayune photographer took a long range picture of Medvid and other U.S. and Soviet officials going down the *Konev's* gangplank. The picture appeared in the Times Picayune and the caption under the picture erroneously listed the Soviet ship's doctor as Medvid. The ship's doctor had a heavy beard and, even from a distance, clearly was not Medvid. However, Medvid also appeared in the picture.

When Joseph Wyman saw this picture in the paper, he noticed that the bearded man was not Medvid and called Border Patrol headquarters to tell them that the man they brought ashore was not Medvid. The chief agent took the call at the Border Patrol office and told Wyman they were aware of the error. There was possibly a misunderstanding during the telephone conversation. Wyman seemed to think that the Border Patrol was admitting that Medvid was not in the picture, and that the Times Picayune had taken "some liberties" with the caption under the picture. The chief agent of the Border Patrol told the subcommittee staff director that he told Wyman that the Border Patrol was already aware of this error in the caption and that they had so advised the newspaper.

Nevertheless, Wyman told journalists that the person coming down the gangplank described as Mevid was not the same Medvid that had been ashore the first night. This statement was printed in the New Orleans area, and when Lieutenant Geltz read about it, he remembered he had taken pictures of the "second" Medvid. He therefore got his pictures out, contacted Wyman, and met with him to discuss the identity of the man who was re-interviewed by State Department officials. Joseph Wyman's doubt about the identity of the man who was re-interviewed was then released to the press.

The second major "substitution" contention began with the publication of an article in the New York Times on March 2, 1986, which was co-written by reporters Clyde H. Farnsworth and Joel Brinkley. The article reported the concerns of some that "a switch" occurred between the time Medvid was identified by Border Patrol Agent Spurlock in the ship's infirmary on October 25 and the next time U.S. officials had contact with him on the afternoon of October 26. The article also listed the following factors which the authors felt were indicative of a possible switch of seamen: (1) the discrepancy between Dr. Caruthers' description of Medvid and the Border Patrol officers' measurement of him, (2) Medvid's original interview in Ukrainian and his subsequent apparent preference for an interview in Russian, (3) the reports of two handwriting analysts who concluded that writing samples on different days were probably written by different people, (4) Medvid's initial attitude of fear during the Border Patrol interview and his subsequent "flippant" attitude during the re-interview process, and (5) the possible

discrepancy between Lieutenant Geltz' photographs of Medvid and the Border Patrol photograph, and the Navy's subsequent disciplinary action against Lieutenant Geltz.

All of the questions that the above contentions raise have been addressed during the hearing and investigation process, and it would appear extremely unlikely that a "substitute Medvid" was used during the re-interviews conducted by State Department personnel. Border Patrol Agents Spurlock, Vannett and Worley clearly described the "chain of identification" that was used to ensure that the same Medvid was being interviewed at all times, and this identification process appears to be most convincing. In addition, INS, State Department, and U.S. Armed Forces officials with firsthand contact with Medvid testified before the Immigration Subcommittee that the Border Patrol photograph and the Geltz photographs are good likenesses of Medvid. This group of officials includes Dr. Caruthers, whose physical description of Medvid gave cause for some to advocate the "substitute Medvid" theory. In an answer for the hearing record of February 5, 1986, Dr. Caruthers stated that the original Border Patrol picture of Medvid was a photograph of the man he examined on October 26 and 28, 1985.

During the week of February 10, 1986 the Chief Counsel and Staff Director of the Immigration Subcommittee went to New Orleans to investigate the Medvid case and interview people who saw Medvid either during his initial encounter with the Border Patrol officers or the subsequent re-interview process. The following government employees saw Medvid during the re-interview process: (1) William Collette, Border Patrol agent (saw Medvid on the *Salvia*), (2) Commander Armand L. Chapeau, U.S. Coast Guard (trip from *Salvia* to the shore); (3) Commander Walter Bodner, Jr., U.S. Coast Guard (*Salvia*, and the trip from *Salvia* to the shore); (4) John Caplinger, INS Assistant District Director for New Orleans (trip from shore to Naval facility and return); (5) Petty Officer Darrell Barraclough, Master at Arms, U.S. Naval facility, Algiers, LA (U.S. naval facility); (6) Dave Mandel, Border Patrol agent (U.S. naval Facility); and (7) Bernard R. Cleary, civilian photographer for the Navy (U.S. Naval facility). Each person was shown the photograph taken of Medvid by the Border Patrol officers the night Medvid first came ashore. Each positively identified the Medvid they saw during the re-interview process from the initial picture.

The Staff Director also interviewed Mike Flad, an employee of Universal Shipping, who took custody of Medvid from the Border Patrol officers, after they ordered him deported, and took him—via a launch—back to the *Marshal Konev*. Flad was shown the unofficial pictures that Lieutenant Geltz took of Medvid, and he identified Medvid positively from them.

Finally, State Department witnesses at the March 7, 1986 hearing stated that the "handwriting analysis" referred to, but not discussed, by the Times article was apparently based on Medvid's printing in the Roman alphabet and his Cyrillic alphabet signature. Given Medvid's unfamiliarity with the Roman alphabet, the analysis would appear to have little validity.

(2) "RUSSIAN LANGUAGE/NEUTRAL SETTING ISSUE"

There has been criticism, particularly by the Ukrainian-American community, that the failure to conduct the second interviews in the Ukrainian language and the presence of Soviet officials during these interviews intimidated Medvid and prejudiced the outcome toward Medvid's declining to seek asylum. There was also some contention that Medvid's initial fluency in Ukrainian and his subsequent preference for Russian lent credence to the "substitute Medvid" theory.

The State Department witnesses testified that the standard procedure for potential defector interviews involving officials of the United States and a foreign country is to use the official language of the nations that are involved: in this case Russian and English. The State Department translator, Ross Lavrov, was fluent in both Ukrainian and Russian, so if Medvid had requested translation into Ukrainian, that service would have been performed. Both the translator and the State Department negotiator, Louis Sell, determined that Russian was Medvid's primary language. While Dr. Padoch did translate the initial Border Patrol interview into Ukrainian for Medvid, she testified that she did not understand or speak Russian, so she was not in a position to know whether Medvid was more competent in Russian or Ukrainian. During the subcommittee staff's study of the language issue, it became apparent that many residents of the Ukraine are competent in both languages, but likely to use Russian with increasing frequency as they progress through the Soviet educational system. Since Medvid had spent a few years at a post-secondary technical school, it is entirely consistent to conclude that, while probably speaking Ukrainian as a child, he would likely have become more fluent in Russian as he progressed through formal schooling.

There is no clear conclusion to the "neutrality" issue, since it is difficult for any person to know how intimidated Medvid may or may not have been during the re-interview process. While Senator Humphrey made the valid point that Medvid was perhaps suspicious of all U.S. officials after his experience with the Border Patrol officers, Louis Sell gave convincing testimony that it was clear that the United States was in full physical control of the interview situation. It is reasonable to conclude that, had Medvid truly desired political asylum in the United States, it was clear to him that the Soviet officials would not have been physically capable of stopping him. While their presence may have reminded him of the possible reasons he had for returning home (to avoid jeopardizing his family), the Soviet presence does not seem to have been capable of altering a decision that was Medvid's alone to make.

In addition, there is an important bilateral relations reason for allowing a Soviet presence at interviews such as these. If the United States Government were to deny a Soviet presence in defector interviews, the Soviets could retaliate by denying a United States presence in cases where U.S. citizens are being interviewed by Soviet officials in the U.S.S.R. This would be particularly injurious to U.S. interests overseas, especially given the coercive nature of the Soviet state and the possibility that they might well detain United States citizens against their will.

The issue of a "substitute Medvid," despite the language element, has already been discussed, and will not be reconsidered in this section.

"INCAPABLE OF MAKING A RATIONAL DECISION ON ASYLUM"

Some critics of the U.S. Government's handling of the Medvid case have alleged that Medvid was not capable of making a rational decision regarding asylum during the reinterview process. These allegations have been based on the following: (1) Soviet threats to Medvid and his family made his decision not to defect invalid; (2) Medvid was given potent, neuroleptic drugs by the Soviet ship's doctor and U.S. doctors failed to conduct blood or urine tests to determine whether Medvid was under the influence of drugs during the reinterview process, and (3) Air Force psychiatrist William Hunt reported that Medvid faced the possibility of a "manic episode" if he were questioned further, and this potential calls into question Medvid's competence during the entire re-interview process.

Based on information from the subcommittee hearings and staff investigation, none of these contentions appears valid. With regard to point one, it is quite possible, and indeed probable, that the Soviets threatened some form of retaliation against Medvid's family if he did not renounce his defection attempt. However, the choice to request asylum is Medvid's alone, and the U.S. Government has no right to assume that Medvid wished political asylum but declined to ask for it merely because threats against his family were made. Both INS (Roger Brandemuehl) and State Department (Louis Sell) witnesses who had contact with Medvid stated that he mentioned his "Mama and Papa" repeatedly. However, absent any other physical or medical constraints on Medvid's thought process, coercion and retaliatory threats alone were not sufficient to impede Medvid's ability to make a rational decision with regard to asylum.

On point two, the Navy and Air Force doctors testified that they examined Medvid with the assumption that he had previously been given strong sedatives, because the Soviet ship's doctor told them that he had administered such medication to Medvid. The U.S. doctors' responsibility, however, was to determine whether Medvid was under the influence of drugs at the time of the re-interview process, and whether he was capable of making a rational decision concerning political asylum during that process. After each doctor had performed two separate examinations on Medvid, both concluded that he was not under the influence of drugs, and that he was capable of making a rational decision with regard to asylum.

On point three, both Dr. Caruthers and Dr. Hunt testified before the subcommittee that none of the clinical examinations that they made of Medvid gave them any cause to believe that further tests were necessary to determine whether Medvid was under the influence of drugs. Their clinical observations—which included examinations of occular movement, breathing, pulse, blood pressure, "blunted behavior"—clearly indicated, according to them, that Medvid was not under the influence of drugs, and that additional laboratory tests were unnecessary. In his written answer for the hearing record, Dr. Hunt expanded on the clinical observations

that are made to determine drug-influenced behavior, and he noted that these are preferred by leading psychiatrists over laboratory tests, which are reliable in determining trace elements of certain drugs, but not reliable in determining drug levels in the bloodstream. The initial criticism of the doctors' examinations, and the first suggestion that blood and urine test should have been conducted, came from Dr. William E. O'Malley, who testified before the Senate Agriculture Committee on November 12, 1985. Dr. Hunt, in written testimony for the hearing record, noted the following about Dr. O'Malley:

> In his testimony, Dr. O'Malley stated that he was "Board-qualified in Neurology and Psychiatry." To some this may sound impressive. However, this statement also indicates to the more informed that Dr. O'Malley is not board certified in Psychiatry or Neurology. In other words, he has not been designated a specialist in the area of Psychiatry or Neurology by the American Board of Psychiatry or Neurology. The statement furthermore indicates that he has either not taken, or has not passed his board certification exams. He also states in his testimony that for the past 15 years he has held various positions in the U.S. pharmaceutical industry. I have questions about how many patients he has seen in the past 15 years, and about his activity in the field of clinical psychiatry in the past 15 years.

(Dr. Hunt, in his prepared statement, noted that he was Board-certified in Psychiatry and Neurology). There is clear evidence that blood and urine tests were neither necessary nor appropriate.

On point four, Senator Humphrey called into question the returning of Medvid because Dr. Hunt had reported the possibility of Medvid entering into a "full-blown psychosis" if he were to be detained for questioning any longer. This question is discussed at length earlier in this report, and Dr. Hunt has responded in the following manner to the committee's satisfaction: (1) while the potential for psychosis existed, Medvid was clearly competent on October 28 and 29, and (2) even if Medvid had experienced a manic depressive illness, a U.S. court of law would still likely have held him to any contractual obligations since it has been held that such a person "has the necessary cognitive ability required in law."

(4) "Secret Agreements to Return Soviet Defectors"

There has been a contention by some that the United States has an agreement with the Soviet Union to return all Soviet defectors who are associated with the United States-Soviet grain agreement. There was also a contention by some that the upcoming United States-U.S.S.R. Summit at Geneva caused United States officials to expedite the re-interview process and avoid a defection that would embarrass the Soviet Union.

The "grain agreement" theory would require unprinted but well-disseminated knowledge at the executive branch level of a policy of returning all Soviet seamen who defect from Soviet grain freighters. In the Medvid case, this would have required the arresting

Border Patrol officers to contact higher officials at the INS or the State Department to receive instructions for the return of Medvid. This scenario was the subject of many questions asked by subcommittee members at the hearing of March 7, 1986, when Border Patrol agents Spurlock and Bashaw testified. Both agents said that they did not speak with any other U.S. Government official before they ordered Medvid returned to his ship, and that they were aware of no such policy or agreement. In addition, INS and State Department policy-level officials testified, under oath, that no such "secret agreement" exists.

The "Geneva summit" theory holds that the re-interview process was tainted by the U.S. Government's desire to return Medvid and avoid embarrassing the Soviet Union immediately before President Reagan and Secretary General Gorbachev met in Geneva. The subcommittee members asked extensive questions concerning the existence of "summit pressures" on the re-interview process. Witnesses with firsthand involvement with Medvid—such as Louis Sell and Roger Brandemuehl—testified under oath that there was no mention of the upcoming summit during the questioning of Medvid. Witnesses at the policy-level from the INS and the State Department—such as Commissioner Alan Nelson, Ambassador Rozanne Ridgway, and Deputy Assistant Secretary William Woessner—testified under oath that no such instructions were sent from Washington, nor was the upcoming Summit even discussed amongst "crisis team" members in Washington as the events unfolded in New Orleans.

There has been no evidence presented to substantiate the claims of a secret grain agreement regarding defectors or a distortion of the reinterview process because of the pending Geneva Summit. The testimony of those officials involved convincingly rebuts the contentions raised and discussed here.

(5) "Administration Refusal To Enforce a Senate Subpoena"

Senator Humphrey (during the subcommittee hearing on March 7, 1986) stated his disapproval of the Administration's disregard of the Senate Agriculture Committee subpoena. Senator Humphrey had also sent a letter to Attorney General Edwin Meese on November 18, 1985 (appendix A), which stated in part:

> As you know, sec. 215 of the Immigration and Nationality Act empowers the President to promulgate regulations and procedures governing the entry and departure of aliens to and from the United States. 8 CFR Part 215 is the authority (along with the companion State Department regulations under 22 CFR Part 46) that controls the departure of aliens. Part 215.2(a) cites the authority of the departure control officer to prevent such a departure where it would be prejudicial to U.S. interests. Part 215.3 lists the various circumstances where U.S. interests are prejudiced by alien departures. Subsection (h) identifies any ". . . investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United

States, whether national, state or local" as justification for preventing an alien's departure from the U.S.

It is clear that an investigative hearing conducted by a standing committee of the U.S. Senate would qualify as a proper purpose that would mandate Mr. Medvid's attendance and participation. Yet, it is equally clear that this law was ignored when Medvid's ship, the *Marshal Konev,* was allowed to depart the U.S. without even so much as an attempt to delay this Soviet sailor's departure. As you are our nation's foremost law enforcement authority, I am respectfully requesting from you an explanation of the lack of obedience to the clear letter of the law.

Senator Humphrey sent an additional letter on March 5, 1986 (appendix B), inquiring into the Administration's failure to respond to his earlier letter.

The Department of Justice answered Senator Humphrey's letter on April 10, 1986 (appendix C), stating in part:

The Department of Justice is aware that section 215 of the Immigration and Nationality Act empowers the President to promulgate regulations and procedures governing the entry and departure of aliens to and from the United States. Indeed, 8 CFR part 215 does accord authority to appropriate officers of the United States to deny the departure of an alien under the circumstances you describe.

However, Public Law 95-521 establishes specific procedures for the enforcement of Senate subpoenas. Specifically section 288d of title 2, U.S. Code, authorizes the Senate Legal Counsel to bring an action in any U.S. Court ". . . to prevent a threatened failure or refusal to comply with any subpoena or order issued by the Senate or a committee or subcommittee of the Senate authorized to issue a subpoena or order." The clear purpose and intent of this legislation is to empower the Senate with the means necessary to enforce its own subpoenas.

Consequently, the Department of Justice believes it prudent and entirely consistent with the "Separation of Powers" doctrine not to interfere in actions to enforce Senate subpoenas. Clearly, the Senate has the authority and discretion to exercise its own enforcement power. However, I can assure you that had the Senate Legal Counsel sought enforcement of the Senate Agriculture Committee subpoena of Seaman Medvid in any U.S. court and had that court ordered the detainment of Mr. Medvid, the Department of Justice would have made every effort to enforce the detainment. But absent any such order, the Department of Justice would be unnecessarily intervening with the powers and prerogatives of the Congress as clearly expressed in the language and legislative history of Public Law 95-521.

Sections 288b and 288d of title 2, U.S. Code (PL 95-521) are the controlling sections with regard to the issuance and enforcement of

Senate subpoenas. Section 288d describes the procedure for enforcement of a Senate subpoena or order:

> Sec. 288d. Enforcement of Senate subpoena or order
> (a) Institution of civil actions
> When directed to do so pursuant to section 288b(b) of this title, the Counsel shall bring a civil action under any statute conferring jurisdiction on any court of the United States (including section 1264 of title 28), to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened failure or refusal to comply with, any subpoena or order issued by the Senate or a committee or a subcommittee of the Senate authorized to issue a subpoena or order.

Section 288b(b) then describes the Senate approval necessary for the Office of Legal Counsel to bring a civil action with regard to a subpoena:

> (b) Civil action to enforce subpoena
> The Counsel shall bring a civil action to enforce a subpoena of the Senate of a committee or subcommittee of the Senate under section 288d of this title only when directed to do so by the adoption of a resolution by the Senate.

No such resolution was passed by the Senate during the period between the serving of the Senate Agriculture Committee subpoena and the departure of Medvid and the *Marshal Konev* from U.S. waters.

Senator Humphrey's criticism of the Justice Department's slow response to his inquiry concerning the Senate subpoena appears valid. However, the April 10, 1986 letter from Assistant Attorney General John Bolton outlines the administration's rationale concerning enforcement of the subpoena, and refers to the statutory basis for that rationale. Simply stated: the enforcement of a Senate subpoena is sought by the Senate Office of Legal Counsel only after a Senate resolution has been passed requesting such action. The Senate did not pass such a resolution, thus formal enforcement of the subpoena was never sought.

In addition, the administration's actions—in lieu of enforcing the subpoena—were clearly appropriate and sufficient. Medvid was removed from his ship, examined to determine his competence to make a decision on asylum, and interviewed in two separate proceedings to determine if he wished to request political asylum. Essentially, the administration made the same type of inquiry that a Senate committee would have made had it been successful in securing the presence of Miroslav Medvid. With no legal obligation to enforce the subpoena, and very convincing evidence that Medvid was not now requesting political asylum, the administration's actions appear neither improper nor illogical.

Finally, it should be noted that the subpoena was issued by a committee with only marginal jurisdiction over the Medvid incident. While the Agriculture Committee does have jurisdiction over the United States-Soviet grain deal, there is absolutely no evidence that the Medvid incident was handled differently because he deserted a Soviet grain freighter, nor that Medvid would have acted

differently had he been a seaman on a different type of Soviet ship. The Medvid incident did have strong implications for United States asylum policy and United States-Soviet relations, and these issues are properly the jurisdiction of the Judiciary and Foreign Relations Committees. However, neither committee issued a subpoena ordering the appearance of Medvid. The administration's reluctance to enforce the Agriculture Committee's subpoena—given the unclear sentiment of the relevant committees and the full membership of the Senate—is understandable.

V. MAJOR ROLES

A number of individuals with firsthand contact with Medvid played major roles in the incident. This section discusses the roles and statements of each of these individuals concerning the handling of the Medvid case.

Many of the individuals testified before the subcommittee during one of the three public hearings, and their statements are included earlier in this report. However, to summarize, these individuals are: (1) Assistant INS Commissioner Roger Brandemuehl, who was present during the re-interview process and who helped formulate a contingency plan to remove Medvid forcibly from the *Marshal Konev* if the Soviets had not consented to his removal; (2) Navy Dr. J.M. Caruthers and Air Force Dr. William Hunt, who testified that they examined Medvid before and during the re-interview process and found him both physically and mentally capable of making a rational decision concerning political asylum; (3) State Department officer Louis Sell, who conducted the re-interviews with Medvid, and found Medvid capable of making a rational decision and increasingly insistent on being allowed to return to his ship; (4) Border Patrol Agents Spurlock and Bashaw, who initially interviewed Medvid and did not recognize his statements, as translated by Irene Padoch, to constitute a request for political asylum; and (5) Border Patrol Agents Vannett and Worley, who had contact with Medvid during the re-interview process and established the "chain of identification" that ensured that no imposter was substituted for the real Medvid for the second interviews.

The subcommittee staff has also contacted a number of individuals who had significant firsthand contact with Medvid, but did not participate in the subcommittee hearings. A summary of the statements of these individuals, as related to the subcommittee staff, follows:

Joseph Wyman.—A jeweler in Belle Chasse, LA, he, along with his nephew, Wayne Wyman, was the first person on shore to contact Medvid the evening of October 24, 1985.

According to Joseph Wyman, the 24th was the first night in years that he and his nephew had worked after 5:00 p.m. While Wayne worked, Joe had gone home and had just returned at 7:30 when Medvid ran right up to Wayne in the parking lot. Medvid was on a "dead run," and really excited. He held a jar in his hand as he gestured with both arms. He was so close that Wayne pushed him back. While Medvid gestured and tried to communicate, "Wayne just stood there in amazement."

When Joseph Wyman asked Medvid if he were Russian, "he hit himself on his chest with his fist and said proudly, 'Ukrainian, Ukrainian!' " A veterinarian, whose office is next door in the shopping center, came by when Medvid was saying something that Wyman stated he now knows to mean, "I want to live in an honest and just country." Wyman asked him, "You want New Orleans police?" and Medvid nodded. Wayne offered to take him, and they left about 20 minutes after Medvid had arrived at approximately 8:00 or 8:15 p.m. Wyman said it took about 35 to 40 minutes to get to the police station in New Orleans.

Just as they left in Wayne Wyman's car, Joseph Wyman noticed 3 men walking across the highway, one with an orange shirt that "showed up like a sign." They crossed the highway and Wyman thought at first the one with the orange shirt was the same man who had just left with Wayne. Then he noticed his face was a little squarer, and he was shorter and lighter.

Wyman said the man in the orange shirt, who spoke "perfect English", walked up alone and asked if Wyman had seen anybody wandering around. Wyman answered "No," and asked why. The man in the orange shirt replied that "one of our comrades just fell off the ship and may be wandering around." Wyman said the 3 then talked together in the parking lot before heading back down the highway toward the ship.

Wyman said he saw those 3 again when he went with Senate Agriculture Committee staff members Terry Wear and David Sullivan to the ship at the grain elevator and studied the Russian seamen lining the rail of the ship. He said he saw all three at the rail.

Wyman maintained that Lieutenant Geltz' subsequent pictures were of the man in the bright neon-orange shirt. He said the man in the orange shirt had flat eyebrows, whereas the "original" Medvid had "horseshoe" eyebrows.

Wyman stated that he had learned of a secret agreement on grain sales between the United States and Russia. According to him, the State Department agreed to return all ship jumpers and the Soviets agreed to pay in gold.

Of all the individuals who had firsthand contact with Medvid, Joseph Wyman is the most forceful advocate of the position that a "substitute Medvid" was supplied for the reinterview process, and that a secret agreement exists whereby the United States would return all defecting Soviet seamen who worked aboard Soviet grain freighters.

According to Mark McLeman, Lieutenant Geltz' attorney, Joe Wyman also claims that Agent Spurlock told him he had made a call to the State Department before he involved Padoch in the initial interview, and was called back by the State Department after the Padoch interview and told to send Medvid back. So he sent him back. (Wyman quotes Spurlock as saying, "I did my job, and if they try to hang me, I'll burn them all the way to the top.")

Mike Flad.—who supervised the return of Medvid to the *Marshal Konev* after Border Patrol officers ordered him deported, is an employee of Universal Shipping, a shipping agency that represented the *Marshal Konev* while it was in port.

Flad stated that he was told by his supervisor, Tom Richard, late on the night of October 24, 1985, that the Border Patrol had a

seaman from the *Marshal Konev* to be returned. Flad went to the Border Patrol office in Algiers, and the Border Patrol asked him to sign the normal form. He said the Border Patrolman asked if he had handcuffs, and when he said no they gave them a plastic cuff.

Flad stated that he, a launch boat operator, and another Universal employee took Medvid back to his ship. When they reached the ship with Medvid the first mate came down, and he and Medvid shouted back and forth. Then Medvid jumped into the river. Flad told Raymond Guthrie, the launch operator, to retrieve him, but Medvid would not take the life ring. The Soviet first mate wanted to jump in, but Flad stopped him. They followed Medvid to the shore, and the first mate jumped out and chased Medvid and tackled him about 20 feet from the boat. Flad followed. He said the first mate and Medvid hollered at each other and Medvid acted like he had "freaked out or something." He stated that Medvid banged himself against the rocks in frustration ("once or twice"), and they pulled him into the mud, away from the rocks. He said Medvid was bigger than the first mate. Flad said "I don't think he knew what he was doing when he banged his head. He acted silly or goofy—laughing and joking. I thought he figured it was a joke."

Referring to Medvid's swim ashore, Flad noted that, "It took a good athlete to do what Medvid did."

Flad was shown the Border Patrol pictures of Medvid, and the unofficial pictures taken by Lieutenant Geltz. He was shown Geltz' pictures first and reacted, "This is the man. I am positive. Look at the expression on his face. That's how I know him."

Flad then looked at the Border Patrol picture and said, "That's him. That's definitely him. Look at the smile." Looking again at the Geltz pictures, Flad stated, "On the small pictures I'm positive."

He estimated Medvid to be 6 feet, maximum, and 180 pounds, maximum.

Flad also noted that he doubted there actually was a search party (referring to the 3 men that Joseph Wyman said he saw right after Medvid left his shop). Flad said there are three reasons why he questions the existence of a search party: (1) How could they get ashore? There is no record of a boat going out to bring them in, and that was the only way that such a party from a foreign ship could get to shore; (2) "comrade" is not a term Soviets use, but one Americans think Soviets use; and (3) when Flad brought Medvid back to the *Marshal Konev*, the ship was dark, everyone was in bed, and the first mate seemed very surprised to see that one of his seamen had deserted the ship.

Raymond Guthrie.—a launch boat operator, piloted the launch that took Medvid—along with Universal Shipping employee Mike Flad and another Universal employee—back to the *Marshal Konev*.

Guthrie stated that at about 2:00 a.m. on October 25, 1985, he received a call from Mike Flad requesting transportation to the *Marshal Konev*. Approximately 45 minutes later Flad, accompanied by a security officer and a seaman (Medvid) arrived. They were in the office for about 10 minutes. Guthrie noticed no particular sign of concern from the seaman, although at one point he nodded toward the ship and drew his finger across his throat. Guthrie said he interpreted this to mean that, Medvid would be in trouble when he

got back on the ship which Guthrie said he assumed was the case with all seamen who are returned after they jump ship.

Guthrie stated he was manning the wheel most of the time so he was unable to watch Medvid as they returned to the vessel. Although Guthrie did not pay much attention when Medvid and the second officer from the ship were speaking to each other at the ship's gangplank, he did notice when Medvid jumped overboard. He immediately shut down the engine to avoid hurting Medvid with the propeller. Guthrie also said he handed the life buoy to someone to throw to Medvid, but Medvid would not take it.

Guthrie stated that at this point he was instructed to keep the boat between Medvid and the shore, which he did, but Medvid just swam around or under the launch. Therefore, Guthrie directed the boat toward the shore, parallel with the swimming Medvid, and arrived at the rocks that lined the edge of the river at about the same time as Medvid, but 30 or 40 feet away. The Soviet second mate jumped off the launch and ran up and apprehended Medvid about 20 to 30 feet from shore.

Guthrie was then told to go back to the ship and pick up some more seamen, and after he brought them back to shore, they all carried Medvid onboard the launch under their arms. He said there was no sign of any injury to Medvid, no blood in the launch, and no blood on Medvid's face or head.

(Because the interview took place in New Orleans, Mr. Guthrie was able to take the subcommittee staff director to the scene of the apprehension. Guthrie showed him the launch, and then pointed out the area on the bank where Medvid swam ashore the second time. At that point, the shoreline has rocks ranging from softball to bushel basket-size for 15 to 25 feet, then mud with high (4 to 6 feet) weeds for the next 25 or 30 feet. Beyond that there is a gradual rise toward the levee, which is significantly farther away. Guthrie had to stay on his launch and keep if off the rocks, so he was not able to see much of what was occurring onshore. However, during the time Medvid was in the water and when he got to shore, Guthrie did try to keep the launch's searchlight on Medvid so the party would not lose him.)

Lieutenant James Geltz.—a public affairs officer at the Algiers Naval Support Facility, took unofficial pictures of Medvid as he was leaving the bachelor officers' quarters (BOQ) on the naval base to enter a car for the final return to the *Marshal Konev.* The pictures taken by Lieutenant Geltz have been used by some as evidence in support of the "substitute Medvid" theory.

Lieutenant Geltz stated that he and his associate took a total of 19 pictures. Geltz took 8 pictures in black and white, and his civilian associate, Bernard Cleary, took 11 in color. He described his involvement as beginning when he went to the BOQ on October 29 at 12:00 or 12:30 p.m., and someone came out of the area where Medvid was being interviewed and said "We're taking him back." Geltz stated that he was surprised, astounded, that they would be returning the Soviet seaman. To get Medvid to a location where he could photograph him, Geltz suggested to some of the security people that they take Medvid out the side door, and the security people decided to do that. Later someone informed him that, "We're going to move him at 3:30 p.m." Geltz then went to his

office, which was across the parking area from the side door. His assistant was loading film in two cameras. They waited in the Public Affairs Office where the windows were tinted green. They couldn't be seen from the parking lot. The actual transfer finally took place at about 4:50 p.m., and he and his assistant took the pictures as Medvid walked to the waiting vehicle.

The next day his assistant informed him that the pictures were not clear. Geltz never looked at the negatives until approximately 2 weeks later, when he read that a different seaman may have been brought ashore for the interview. He then asked his assistant for the pictures and got two strips of negatives and one 8 x 10 print.

After reading in the paper that Joseph Wyman had expressed some doubt about the identity of the "second" Medvid, Geltz stated that he joked to his secretary that he ought to call Wyman and ask him what he thinks of the pictures. He eventually did, and arranged a meeting at a restaurant where he met Wayne and Joseph Wyman and showed them the pictures. According to Geltz, both said "It might be or it might not be." (Joseph Wyman says he told Wayne not to say anything definite until they found out who the officer with the picture was.) After talking some more, Wayne and Joseph told Geltz that it was not the same person that they saw the night Medvid came ashore.

Geltz then obtained the Border Patrol picture of Medvid and went to see the base commander, Captain Fare. Lieutenant Geltz showed the pictures to Captain Fare and told the Captain he had shown the pictures to the Wymans. Captain Fare asked him, "What in the world caused you to take these pictures off the base and show them to someone? Who else did you show these to? Where are the negatives? Do you think you are qualified to make such a determination? I can't believe you'd violate our trust (allowing Geltz to be in the area where they had Medvid for the interview). I want those negatives!" Geltz told him, "Yes, sir," took the pictures and left.

Geltz stated that he had had other work to do and was relieved that Captain Fare had given him no time limit to bring the negatives in. He finished his work and went to bed. At 6:00 a.m., Joe Wyman called and said that he had told David Sullivan of the Senate Agriculture Committee about the pictures, and Sullivan said, "We'll need those pictures for our investigation." Lieutenant Geltz, who stated he "figured his career was ruined anyway," went to Wyman's house where Jim Lucier (Senator Helms' chief legislative assistant) telephoned and said that he wanted to talk to Lieutenant Geltz. Lucier told Geltz the pictures would be of immense importance to the investigation. Then Sullivan called and told Geltz that the pictures would be subpoenaed and to hold them for the subpoena.

In he meantime, Captain Fare contacted Geltz and asked him why the pictures had not been turned in, and told Geltz he had until 7:00 a.m. the next morning to have them on his desk.

Geltz gave the negatives to his wife, who put them in an envelop in her purse. Geltz kept waiting for the subpoena—which did not appear—and when the negatives were not turned in to Captain Fare the next morning, the Master at Arms located Geltz and con-

fined him to a room in the BOQ. Geltz was later taken before Admiral's Mast and given a non-judicial reprimand. Mrs. Geltz was also sent a letter of reprimand (which was later retracted) for her part in withholding the pictures from Captain Fare.

Geltz described the man he photographed as wearing an orange shirt, with black hair and olive skin.

Ross Lavrov.—the contract interpreter to the State Department who performed the translation services during the formal re-interview process.

Lavrov stated that, although Medvid grew up in the Ukraine, Russian was "clearly his primary language." He said all of Medvid's schooling and instruction since an early age would have been in the Russian language, and that Medvid spoke "absolutely flawless" Russian—with the exception of perhaps a few grammatical errors in his speech, but this would have been due to lack of education rather than lack of comfort or ability in the Russian language.

When asked whether Medvid indicated any desire to speak in Ukrainian, Lavrov responded "No, on the contrary." He stated that Medvid appeared surprised when he asked a few questions in Ukrainian. Medvid briefly responded in Ukrainian, but "two or three words later" he switched back to Russian. Lavrov said that he made the statement in Ukrainian because he was curious about Medvid's comfort with the Ukrainian language, since he spelled his name M-E-D-V-I-D, which is the Ukrainian word for bear, as opposed to M-E-D-V-E-D, which is the Russian word for bear.

Lavrov said that the general conditions in the Ukraine are such that a child will learn Russian and only Russian from the first day that he is in school. School for most Soviet children starts at the kindergarten level at about 5 years of age, but many Ukrainians, particularly those who work in the larger cities such as Kiev, send their children to day care centers from the ages of 2 or 3 years. In these centers, Russian again is the only language used. Lavrov noted that most of the crew aboard the ship was Ukrainian, yet he heard them speak nothing but Russian.

Lavrov said that he is from Kiev, and spoke Ukrainian as a child but was taught "not a word of Ukrainian until he came to Rochester, New York." It was at this point that he met a group of Ukrainians with whom he spoke the language regularly. Lavrov came to this country when he was 13 years of age.

The only individual who substantially contradicts the Administration's account of the Medvid case is Joseph Wyman. His belief in the existence of a secret agreement between the United States and the Soviets is not supported by any evidence and is convincingly contradicted by the INS and the State Department. The subcommittee staff has carefully reviewed the current grain agreement with the U.S.S.R. and found no provision whatsoever which would support Wyman's allegation. His contention that a "substitute Medvid" was supplied for the re-interview process runs contrary to compelling evidence from INS agents who established a "chain of identification" of the seaman. His description of a "search party" for Medvid has also been questioned. In addition to Mike Flad's valid criticisms of the existence of a search party, it seems unlikely that the Soviets could have dispatched a search party that would

have reached Wyman's shop only be 15 minutes behind Medvid (after dark and nearly 2 miles from where Medvid swam ashore).

VI. ADEQUACY OF CURRENT INS ASYLUM PROCEDURE

A significant issue in the Medvid case has been whether the individual incident of Medvid's return is indicative of a more general inadequacy of U.S. asylum policy and procedures toward nationals of Communist-bloc countries. Senator Humphrey's resolution establishing a special Senate panel on asylum specifically called for an examination of present U.S. asylum policy toward applicants from Communist-bloc countries.

The Immigration and Naturalization Service commissioned an internal review of asylum procedure and policies because of the Medvid incident, and a final report was issued on November 27, 1985. The report was produced by an INS task force headed by former Associate Commissioner for Examinations Andrew J. Carmichael. The report was then discussed at an Immigration Subcommittee hearing of April 25, 1986 concerning certain INS oversight issues and the FY 1987 INS Budget. The task force report concluded that:

> Current INS policy and guidelines for the handling of sensitive cases, including asylum cases, are fundamentally sound and if employed at the earliest stages of the Medvid incident would have, or certainly should have, avoided the serious complications which arose.

Commissioner Nelson reiterated this point at the April 25, 1986 hearing, stating that, ". . . we think the recommendations made reaffirm the position that the basic procedures we had in this area were fundamentally sound and are, but could use more emphasis."

However, the report did make suggestions for improvements in the following areas: (1) current written procedures and instructions, (2) use and availability of interpreters, (3) telephone and other communications capabilities, and (4) additional training for sensitive case handling.

Concerning current written procedures, the report suggested, among other recommendations, that INS: (1) send immediately by telegraph a message to all field offices calling attention to current provisions of Operating Instruction (OI) 103.1(g), which states:

> (g) *Reporting incidents having international implications or unusual or complex matters.* (1) *Incidents having potential international impact.*—District Directors and Chief Patrol Agents are responsible on a 24-hour basis for insuring that information concerning any nonmilitary incident which could have an adverse impact on the conduct of foreign relations occurring in their area of responsibility is brought to their personal attention without delay and that telephone reports be made immediately to the Associate Commissioner, Enforcement or the Associate Commissioner, Examinations. Reports submitted after hours, weekends or holidays will be made to the Communications Branch, telephone (202) 633-4110, which will in turn convey the information to the appropriate Service official. District Di-

rectors and Chief Patrol Agents will keep their respective regional officials advised. *(Revised)*

The report of the incident will include information on its development, proposed courses of action, and actions already taken, if appropriate. The term "nonmilitary incidents which could have an adverse impact on the conduct of our foreign relations" is not defined, but any doubt should be resolved in favor of reporting.

Central Office officials receiving reports of incidents will telephone the Department of Justice Information Center promptly, at any hour of the day or night at (202) 633–2000, and will request referral to the Duty Officer. The official receiving the report from the field or from the Communications Branch will also be responsible for notifying other Central Office officials, as appropriate to the circumstances. The officials listed below are authorized to make decisions and mobilize men and material to support any operations connected with an incident. *(Revised)*

Executive Assistant to the Commissioner: Office Telephone 633–1900.

Associate Commissioner, Enforcement: Office Telephone 633–3032.

Associate Commissioner Examinations *(Revised)*: Office Telephone 633–2982.

(2) *Unusual or complex matters.*—It is incumbent that the Commissioner be informed relative to any current or proposed Service matters wherein interest or inquiries may be made at the Central Office level. Although not exclusive, this invariably is applicable to cases involving person or persons or subject matters of prominence, notoriety, newsworthiness or other reasons which may engender sufficient interest to become inquiries directed at the Central Office. Thus, it is a matter of embarrassment for the Central Office not to be fully informed upon the matters of inquiry.

In the foregoing matters, reports shall be made to the Central Office, by the most expeditious means to the Associate Commissioner, Enforcement or to the Associate Commissioner, Examinations. In the cases of criminal matters falling within the purview of OI 287.10(a) and (b), a concurrent report shall be made to the Commissioner, Attention: Office of Professional Responsibility. In addition, regional offices shall continue to report to the appropriate associate commissioner matters involving policy, complex, novel, or unusual issues which warrant Central Office attention. (*Revised*)

(2) amend OI 103.1(g) to require that any Soviet citizen's required departure from the United States by the INS be automatically reported under that section's reporting requirement, (3) amend current regulations regarding return of alien crewmen to require INS personnel to accompany Soviet crewmen and the transporting party when they are being physically returned to their vessels, and

(4) revise all existing handbooks to include prominent, upfront reference to the provisions of OI 103.1(g).

As of May 14, 1986, the following amended version of OI 103.1(g) was approved, per the recommendations of the Carmichael Report:

> *O.I. 103.1(g) Reporting Incidents Having International* Implications or Unusual or Complex Matters
>
> (1) *Incidents having potential international impact.*—District directors and chief patrol agents are responsible on a 24-hour basis for insuring that information concerning any nonmilitary incident occurring in their area of responsibility which could have an adverse impact on the conduct of foreign relations is brought to their personal attention without delay and that telephone reports be made immediately to the Associate Commissioner, Enforcement, or the Associate Commissioner, Examinations. Reports submitted after hours, weekends or holidays, will be made to the Central Office Communication's Center, telephone FTS 633-2618 or (202) 633-2618, which will in turn convey the information to the appropriate Service official. District directors and chief patrol agents will keep their respective regional officials advised.
>
> The manner in which we handle or relate to foreign nationals in many situations can have foreign policy implications. Some of these situations are:
>
> —Diplomatic passport holders at entry;
>
> —Soviet nationals seeking asylum or expressing a reluctance to depart the United States voluntarily;
>
> —Any life-threatening incident in which Service officers participate with foreign nationals;
>
> —Crewmen from flag vessels of Soviet-bloc nations seeking asylum;
>
> —Disturbances at an international bridge or tunnel;
>
> —Accredited foreign government representatives seeking information about or contact with their nationals whether in Service custody or not.

This is only an illustrative list and not all such interactions will result in incidents with international implications. The phrase, "nonmilitary incidents . . . which could have an adverse impact on the conduct of foreign relations" cannot be defined inclusively. Any doubts should be resolved in favor of reporting. All immediate action claims under OI 208.8 must be reported in this manner as well as the case of any Soviet citizen whose departure from the United States is being required by INS.

The report of the incident will include information on its development, proposed courses of action, and actions already taken, if appropriate.

> Central Office officials receiving reports of incidents, if they concur that the situations have potential international impact, will telephone the Department of Justice Information Center promptly, at any hour of the day or night at (202) 633-2000, and will request referral to the Duty Officer. The official receiving the report from the field or from the INS Communications Center will also be respon-

sible for notifying other Central Office officials, as appropriate to the circumstances. The officials listed below are authorized to make decisions and mobilize personnel and material to support any operations connected with an incident.

Executive Assistant to the Commissioner: Office Telephone 633-1900.

Associate Commissioner Enforcement: Office Telephone 633-3032.

Associate Commissioner Examinations: Office Telephone 633-2982.

With regard to interpreters, the task force suggested that: (1) each district office and border patrol sector prepare and revise lists of all qualified interpreters within the jurisdiction of the district and sector, (2) an official in the INS Central Office be designated to monitor and update the list of interpreters in the field offices, and (3) the interpreter lists be automated so that INS agents may quickly know where interpreters may be reached and what languages they are competent in.

The report found few problems with the INS's telephone and other communications capabilities during the initial interview of Medvid. However, it did note that the Central Office's communications center was temporarily out of service during the re-interview process. The report recommended that: (1) the communications center be constantly provided with a listing of key INS officers and their office and home telephone numbers, (2) that such data be automated for quick reference, and (3) that plans be formulated to increase communications center staff and use the Department of Justice's communications facilities in addition if a crisis develops during "after duty" hours.

Finally, recommendations were made with regard to additional training for INS personnel on "immediate action" asylum cases and other sensitive issues. While the task force found basic training courses generally sound, it did find a need to improve the continued training of "journeymen" officers who had been members of the Service for a number of years. The recommendations were: (1) Basic training and career training courses should be revised to include prominent reference to OI 103.1(g), and (2) Central and Regional Office conferences should be used to remind personnel about the handling of sensitive cases, and district and sector training sessions should specifically review OI 103.1(g) at 90 day intervals.

Commissioner Nelson noted at the April 25, 1986 hearing that the task force's recommendations had been adopted into the INS's procedures and operating instructions.

There is a legitimate question concerning the report's conclusion that the Border Patrol officers' initial use of existing procedures ". . . would have, or certainly should have, avoided the serious complications which arose" in the Medvid case. Agents Spurlock and Bashaw testified that Medvid answered "no" to their inquiries about his desire for political asylum, and thus they would not have recognized his case as an "immediate action" asylum case had they been aware of those regulations. However, the report's recommendations do appear to have addressed the problems exemplified by

the Medvid case. The proposed requirement that any INS order of departure for a Soviet citizen be reported under OI 103.1(g) would immediately involve INS management personnel in return decisions, and would likely have changed the outcome of the Medvid incident. In this light, the task force's recommendations are appropriate and appear to resolve the problem.

VII. CONCLUSION

The Subcommittee on Immigration and Refugee Policy has held an extensive series of hearings and conducted a thorough investigation of the Medvid incident. While some serious questions were raised about the government's handling of the case, there is clear and convincing evidence that the INS and the State Department did everything that was then feasible and appropriate once the incident was brought to the attention of higher level officials.

The following conclusions may be made:

(1) It is unclear whether Seaman Medvid originally sought political asylum or not. The INS contract interpreter, Dr. Irene Padoch, testified that he responded "yes" to queries about his desire for political asylum. Border Patrol agent Ernest Spurlock testified that, in response to questions concerning his desire for political asylum, Medvid was interpreted as saying, "No, he just doesn't want to return to the ship." Press accounts of Dr. Padoch explaining Medvid's initial rejection of political asylum because he interpreted "asylum" to mean "mental asylum" might explain some of the contradictory testimony in this area, although Dr. Padoch later testified that these accounts are inaccurate. Air Force Psychiatrist Dr. William Hunt concluded that Medvid's initial abandonment of the *Marshal Konev* was "based primarily on a rather impulsive decision, 'grabbing for the glitter and gusto,' rather than on any deep-rooted political or moral beliefs." Ship jumping is a common occurrence both in the United States and abroad. Most ship jumpers are not seeking political asylum, but neither do they wish to return to their ships. However, Medvid also displayed his extreme apprehension at being returned to the ship by diving into the river and swimming ashore, and surely his fears about returning should not be discounted.

We will likely never know exactly how Medvid felt about defecting during his first interview with Border Patrol agents, nor will we be certain that he had a clear intention at that time. It does appear improper however—given Medvid's Soviet nationality and the degree of uncertainty concerning his intentions—for the Border Patrol to have returned Medvid without holding him overnight for further interview and without consulting their superiors. While both agents testified that they were unaware of "immediate action" asylum procedures for Soviet-bloc defectors, both also testified that they would not have considered Medvid a "potential asylum applicant" had they been aware of the procedures. This raises serious questions about the actual substance of the first interview. However, from the vantage point of hindsight, it would seem reasonable to expect an exercise of judgment on the part of the Border Patrol officers that would include detaining Medvid

overnight for further questioning and until the officers consulted their Border Patrol supervisor.

(2) U.S. Government attempts to re-interview Medvid were satisfactory and conclusive. The INS was prepared to remove seaman Medvid by force, if necessary, from the *Marshal Konev,* and the State Department conducted a thorough re-interview of Medvid both on a U.S. Coast Guard vessel and at a U.S. naval facility ashore. There is conclusive evidence that the "same person" Medvid was being interviewed at all times, that Medvid was capable of making a rational decision concerning political asylum, that the atmosphere of the re-interview did not prevent Medvid from stating his true intentions, and that no "secret agreements" existed between the United States and the U.S.S.R. to return all seamen who might defect from Soviet grain freighters—before, during or after any summit meeting activities.

It should also be noted that many of the adverse conditions that some critics of the case's handling have postulated simply cannot exist simultaneously. For example, the Medvid who was re-interviewed could not have been a double and under the influence of mind-altering drugs. The Soviets would not have supplied us with a drugged double. In addition, there is no reason for "summit pressures" to have accelerated the re-interview process if we already had a "secret agreement" with the Soviets to return all defecting crewmen. Each specific allegation has been rebutted convincingly. However, some have claimed that the mere existence of this many questions concerning the case is indicative of possible improprieties. Thus, it is important to note that the sum total of all of the allegations are at times obviously internally inconsistent.

The Medvid incident was most unfortunate, and it is apparent that the arresting Border Patrol officers did not exercise good judgment in returning Medvid to his ship without further processing. Disciplinary action is now proceeding against them. However, the present facts disclose that the re-interviewing procedures of the U.S. Government were adequate, appropriate, and conclusive.

APPENDIX

GORDON J. HUMPHREY
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United States Senate

WASHINGTON, DC 20510

November 13, 1985

COMMITTEES
ARMED SERVICES
CHAIRMAN SUBCOMMITTEE ON PREPAREDNESS
ENVIRONMENT AND PUBLIC WORKS
CHAIRMAN SUBCOMMITTEE ON REGIONAL AND COMMUNITY DEVELOPMENT

The Hon. Edwin Meese III
Attorney General of the United States
U.S. Department of Justice
Washington, DC 20530

Dear Ed:

~~I am writing to inquire why the~~ Department of Justice refused to use existing authority under the law to detain Soviet sailor Miroslav Medvid. Specifically, I would like to know why there was no utilization of laws that would have delayed his departure at a time when spokesman for the Immigration and Naturalization Service, a unit of your department, spokesmen were publicly stating that the subpoena issued by Senator Helms' Agriculture Committee was valid and would be honored by INS (November 7-8).

As you know, Sec. 215 of the Immigration and Nationality Act empowers the President to promulgate regulations and procedures governing the entry and departure of aliens to and from the United States. 8 CFR Part 215 is the authority (along with the companion State Department regulations under 22 CFR Part 46) that controls the departure of aliens. Part 215.2(a) cites the authority of the departure control officer to prevent such a departure where it would be prejudicial to U.S. interests. Part 215.3 lists the various circumstances where U.S. interests are prejudiced by alien departures. Subsection (h) identifies any "...investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state or local" as justification for preventing an alien's departure from the U.S.

It is clear that an investigative hearing conducted by a standing committee of the United States Senate would qualify as a proper purpose that would mandate Mr. Medvid's attendance and participation. Yet, it is equally clear that this law was ignored when Medvid's ship, the Marshall Konev, was allowed to depart the U.S. without ever so much as an attempt to delay this Soviet sailor's departure. As you are our nation's foremost law enforcement authority, I am respectfully requesting from you an explanation of the lack of obedience to the clear letter of the law.

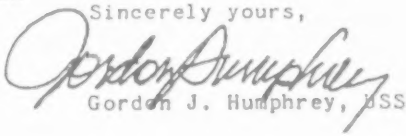
Moreover, subsection (j) requires an alien's departure be delayed when there is doubt he is departing the U.S. voluntarily. Regardless of whether one believes that Medvid left our country freely or not, it is clear that this question was the central issue in this case. Yet, no definitive attempt was made to ascertain the extent of his "voluntary decision" to leave for the Soviet Union. Whatever the extent of the Administration's efforts to interview him and determine Medvid's intentions, doubt still remained as to whether he was leaving freely. A literal reading of this section implies that Medvid should not have departed if this were so.

This is a nation governed by law. If the law becomes a creature of discretion by the branch of our national government which is charged with their execution and enforcement, we will cease to be to be a nation of laws. It is in this spirit that I hope you address this inquiry

I look forward to hearing from you. In the meantime, thank you for your time and attention.

With warmest regards, I am

Sincerely yours,



GJH/df

Gordon J. Humphrey, USS

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United States Senate

WASHINGTON, DC 20510

March 5, 1986

COMMITTEES
ARMED SERVICES
Chairman Subcommittee on Preparedness
ENVIRONMENT AND PUBLIC WORKS
Chairman Subcommittee on Regional and Community Development

The Honorable Edwin M. Meese
Attorney General of the United States
U.S. Department of Justice
Washington, D.C. 20530

Dear Ed:

On November 18, 1985, I wrote to ask why the Department of Justice declined to use existing authority under the law to detain Soviet sailor Miroslav Medvid. One week later I received a letter signed by Jack E. Perkins, of your office, stating that a response would be forthcoming "as soon as possible." Fourteen weeks later, I received a reply from Commissioner Nelson. The letter I received from Commissioner Nelson provides a lengthy chronology of the case, however it does not answer the question I raised. At this point, almost fifteen weeks have passed, and I have yet to receive a reply from the Justice Department to my question..

I enclose a copy of my original letter to the Department and a copy of Commissioner Nelson's reply. Once again, as I asked in my letter of November 18, I ask why the Department did not use existing authority to detain Mr. Medvid, inasmuch as he was wanted for a legislative investigation as evidenced by a subpoena issued by the Senate Agriculture Committee.

With warmest regards, I am

Sincerely yours,

Gordon J. Humphrey, USS

GJH/tk
enclosures

Office of the Assistant Attorney General — Washington, D.C. 20530

Honorable Gordon J. Humphrey
United States Senate
Washington, D. C. 20510

April 10, 1986

Dear Senator Humphrey:

This is in response to your letter to Attorney General Meese of March 5, 1986, which refers to your previous letter of November 18, 1985, and specifically asks why the Soviet Seaman Miroslav Medvid was not detained by the Department of Justice after being served with a subpoena issued by the Senate Agriculture Committee.

The Department of Justice is aware that Section 215 of the Immigration and Nationality Act empowers the President to promulgate regulations and procedures governing the entry and departure of aliens to and from the United States. Indeed, 8 CFR Part 215 does accord authority to appropriate officers of the United States to deny the departure of an alien under the circumstances you describe.

However, Public Law 95-521 establishes specific procedures for the enforcement of Senate subpoenas. Specifically Section 288d of Title 2, United States Code, authorizes the Senate Legal Counsel to bring an action in any United States Court ". . . to prevent a threatened failure or refusal to comply with any subpoena or order issued by the Senate or a committee or subcomittee of the Senate authorized to issue a subpoena or order." The clear purpose and intent of this legislation is to empower the Senate with the means necessary to enforce its own subpoenas.

Consequently, the Department of Justice believes it prudent and entirely consistent with the "Separation of Powers" doctrine not to interfere in actions to enforce Senate subpoenas. Clearly, the Senate has the authority and discretion to exercise its own enforcement power. However, I can assure you that had the Senate Legal Counsel sought enforcement of the Senate Agriculture Committee subpoena of Seaman Medvid in any United States court and had that court ordered the detainment of Mr. Medvid, the Department of Justice would have made every effort to enforce the detainment. But absent any such order, the Department of Justice would be unnecessarily intervening with the powers and prerogatives of the Congress as clearly expressed in the language and legislative history of Public Law 95-521.

Additionally, the Departments of Justice and State, as described in Commissioner Nelson's February 28, 1986 letter, compelled Soviet officials and the captain of Medvid's ship to produce Seaman Medvid for an interview. Seaman Medvid was interviewed on two separate occasions within the confines of two separate United States facilities to determine if he wished asylum in the United States. However, Seaman Medvid made no such request; he repeatedly requested of United States officials that he be allowed to return to his ship and depart the United States. Under such circumstances, it would have been inappropriate to have detained Seaman Medvid against his express wishes.

I trust that this letter specifically answers the questions you have addressed. The Department of Justice apologizes for the difficulties you have had in getting timely answers to your questions.

Sincerely,

John R. Bolton
Assistant Attorney General

○